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| File:Victoria State Government logo.svg - WikipediaNSW government logo |
| Funding Agreement for a Project under the Hume Hydrogen Highway Initiative |
| The Crown in the right of the State of New South Wales, acting through the Treasury (**The NSW Treasury**); with  The State of Victoria, acting through the Department of Environment, Land, Water and Planning (**DELWP**); and  [*insert Recipient’s name*] (**Recipient**) |

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Funding Agreement

#### Date ►

#### Between the parties

|  |  |
| --- | --- |
| The NSW Treasury | The Crown in the right of the State of New South Wales, acting through The Treasury  ABN 55 437 667 728  52 Martin Place, Sydney, NSW 2000 |
| DELWP | The State of Victoria, acting through the Department of Environment, Land, Water and Planning  ABN 90 719 052 204  8 Nicholson Street, East Melbourne, Victoria, 3002 |
| Recipient | [*insert Recipient’s full legal name*]  ABN [●]  [*insert Recipient’s address*]  including, where the context permits, its Personnel and Subcontractors |
| Recitals | 1. The NSW Treasury and DELWP (**the Departments**) enter into this Funding Agreement to jointly fund and administer the Hume Hydrogen Highway Initiative under which the Departments award funding to support approved projects in accordance with the Objectives specified in the Guidelines. 2. The Recipient will carry out the Project, as described in this Funding Agreement. 3. The Departments agree to provide the Funds, and the Recipient agrees to complete the Project and achieve the Outcomes, subject to and in accordance with the terms of this Funding Agreement. |
| The parties agree as follows: | |

# **Project Details**

|  |  |  |
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| **Project overview** | | |
| 1 | **Project title** | [●]. |
| 2 | **Reference number** | [●]. |
| 3 | **Recipient** | [●]. |
| 4 | **Guidelines** | [insert if any], dated [*Drafting Note: Insert date of Guidelines and include annexure reference. Only include guidelines intended to form the defined term 'Guidelines' in clause 2 and throughout the Agreement*]. |
| **Key Project details** | | |
| 5 | **Project** | [*Drafting note: Insert description of Project as described in* [*Schedule 1*]](#_bookmark152). |
| 6 | **Outcomes** | [*Drafting note: Insert outcomes of Project as stated in item* [*1.2*](#_bookmark156) *of* [*Schedule 1*]](#_bookmark152). |
| 7 | **Total Funds** | [*Drafting note: Insert total amount stated in item* [*2.1*](#_bookmark158) *of* [*Schedule 1*]](#_bookmark152). |
| 8 | **Total Estimated Costs** | [*Drafting note: Insert total amount stated in item* [*2.1*](#_bookmark158) *of* [*Schedule 1*](#_bookmark152)]. |
| 9 | **Grant Funding Percentage** | [*Drafting note: Insert the calculation of the ratio, as a percentage, of Total Funds stated in item 2.1 of Schedule 1 against the Total Estimated Costs stated in item* [*2.1*](#_bookmark158) *of* [*Schedule 1*](#_bookmark152)*].* |
| 10 | **Recipient Contributions** | [*Drafting note: Insert total amount stated in item* [*2.3*](#_bookmark160) *of* [*Schedule 1*]](#_bookmark152). |
| 11 | **Other Contributions** | [*Drafting note: Insert total amount stated in items* [*2.4*](#_bookmark161) *of* [*Schedule 1*](#_bookmark152) *and summary of* [*2.5*](#_bookmark162) *of* [*Schedule 1*](#_bookmark152) *if applicable*]. |
| 12 | **Project Completion Date** | [*Drafting note: Intended to be analogous to the commercial operations commencement date for the Project.]* |
| 12A | **Sunset Completion Date** | [*Drafting note: Intended to be a period of 3 years from the Project Completion Date.]* |
| 13 | **Specified Personnel** | [●]. |
| 14 | **Key Project Subcontractors** | [●]. |
| **Other information** | | |
| 15 | **Public acknowledgement of support** | [*Drafting note: Any specific acknowledgements of support to be set out here (relevant to clause* [*19*](#_bookmark79)*)*]   1. The NSW Government’s Waratah logo must be used in conjunction with all acknowledgements of NSW Government support in accordance with the: 2. [NSW Government Brand Guidelines annexed at Attachment 3](https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines) (as may be updated by the NSW Government from time to time); and 3. [Funding Acknowledgement Guidelines annexed at Attachment 4](https://www.nsw.gov.au/branding/funding-acknowledgement-guidelines) (as may be updated by the NSW Government from time to time). 4. The Recipient must follow the '[Acknowledgment and Publicity Guidelines for Victorian Government Funding Support](https://delwp-search-new.clients.squiz.net/s/redirect?collection=delwp-meta&url=https%3A%2F%2Fwww.delwp.vic.gov.au%2F__data%2Fassets%2Fword_doc%2F0022%2F392503%2FDELWP-Acknowledgement-and-Publicity-Guidelines.docx&index_url=https%3A%2F%2Fwww.delwp.vic.gov.au%2F__data%2Fassets%2Fword_doc%2F0022%2F392503%2FDELWP-Acknowledgement-and-Publicity-Guidelines.docx&auth=WhNz6tdNeTRI9kmqoj8Ubw&profile=_default&rank=1&query=acknowledgement+and+publicity)' annexed at Attachment 5 (as may be updated by the Victorian Government from time to time). 5. All directions with respect to the public acknowledgement of support given by either or both of the Departments from time to time. |
| 16 | **Public disclaimer** | The Recipient must include the following statement on any published material in relation to the Project (as may be updated by the Departments from time to time):  *The views expressed herein are not necessarily the views of the NSW Government or Victorian Government. The NSW Government and Victorian Government do not accept responsibility for any information or advice contained herein.* |
| 17 | **Address for invoices** | **The NSW Treasury address:**  [hydrogen@planning.nsw.gov.au](mailto:hydrogen@planning.nsw.gov.au) |
| **DELWP address:**  renewable.[hydrogen@delwp.vic.gov.au](mailto:hydrogen@delwp.vic.gov.au) |
| 18 | **Address for Notices** | **The NSW Treasury:**  Mail Address: 4 Parramatta Square, 12 Darcy Street Parramatta, NSW 2150  Email: [hydrogen@planning.nsw.gov.au](mailto:hydrogen@planning.nsw.gov.au)  **DELWP:**  Mail Address: 8 Nicholson Street, East Melbourne, Victoria, 3002  Email: renewable.[hydrogen@delwp.vic.gov.au](mailto:hydrogen@delwp.vic.gov.au)  **Recipient address:**  [*Drafting note: insert street address here – this cannot be a PO Box for the purposes of receiving a notice*] |

# **Definitions**

# **Definitions**

The meanings of the terms used in this Funding Agreement are set out below.

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| **Term** | **Meaning** |
| **Abandoned** | means circumstances in which no Activities have been carried out in respect of the Project for 60 consecutive days, other than to the extent the Recipient’s obligations to carry out such Activities have been excused in accordance with clause 21(‘Force Majeure’). |
| **Accounting Standards** | means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001 (Cth)*) or other accounting standards which are generally accepted and consistently applied in Australia. |
| **Activities** | means substantive work or activities (whether on the Project site or otherwise) to further the development of the Project. |
| **AEMO** | means the Australian Energy Market Operator Limited (ABN 94 072 010 327). |
| **Agreement Material** | means any Material created by, for, or on behalf of the Recipient on or following the Commencement Date, for the purpose of, or as a result of, performing its obligations under this Funding Agreement, including without limitation, modifications required 15.1(i)(3). |
| **Amended Cure Plan** | has the meaning given in clause 22.1(c)(3). |
| **Application** | means the application submitted by, for, or on behalf of the Recipient for funding under the Hume Hydrogen Highway Initiative in relation to the Project and all related supporting documentation provided by the Recipient in connection with the application. |
| **ARENA** | means the Australian Renewable Energy Agency (ABN 35 931 927 899). |
| **Asset(s)** | means any items of tangible or intangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of the Recipient either wholly or in part with use of the Funds, not including Agreement Material. |
| **Authorisation** | means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any Authority which must be obtained or satisfied (as the case may be) to undertake the Project, including without limitation, any authorisation required from or by FIRB. |
| **Authority** | means any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with the Project. |
| **Bank Account** | has the meaning given to that term in clause 8.1(a)[.](#_bookmark31) |
| **Budget** | means the budget for the Project set out in Attachment 1, as may be amended from time to time in accordance with clause 10.3[.](#_bookmark39) |
| **Business Day** | means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales or Melbourne, Victoria. |
| **CEFC** | means the Clean Energy Finance Corporation (ABN 43 669 904 352). |
| **Change in Control** | in relation to the Recipient or its permitted successors (in this definition referred to as the **First Party**), means a person or persons who do not Control the First Party (in this definition referred to as the **Acquiring Party**) as at:   1. the Commencement Date; or 2. where the First Party is a party to this Funding Agreement because of a transfer approved under clause [16.2(a),](#_bookmark70) the date of completion of that transfer,   (in this definition referred to as the **Relevant Date**), acquiring Control of the First Party, unless the Acquiring Party is itself Controlled directly or indirectly by a person who Controlled the First Party immediately before the Relevant Date.  A Change in Control will not occur as a result of the transfer, issue, redemption, buyback, cancellation, repurchase or reorganisation of marketable securities in an entity that is listed or, in connection with the relevant transaction becomes listed, on a recognised public stock exchange (provided that such Change of Control does not result in the First Party ceasing to be listed as a result of such transaction). |
| **Change in Policy** | means a change in either or both of the Departments policies with respect to or in connection with the funding provided under this Funding Agreement. |
| **CI Act** | means *Security Legislation Amendment (Critical Infrastructure) Act 2021* (Cth) and any regulations created under it, as amended from time to time. |
| **Claim** | means a distress, attachment or other execution levied or enforced upon, or against, the assets of a person, and in the case of legal proceedings or other order or process requiring payment (other than a statutory demand or a bankruptcy notice) which is not withdrawn or dismissed within 10 Business Days’. |
| **Commencement Date** | means the date of this Funding Agreement. |
| **Commonwealth** | means the Commonwealth of Australia. |
| **Confidential Information** | of a party means all know-how, prototypes, data, trade secrets, compiled databases, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:   1. is by its nature confidential; 2. a party has designated as confidential; 3. is capable of protection at common law or equity as confidential information; or 4. is derived or produced partly from the information described in paragraph (1), (2) or (3) above,   but does not include information that:   1. is in the public domain; or 2. is independently known or developed by the party receiving the information other than as a result of a breach of this Funding Agreement or any other obligation of confidentiality owed by or to any other person. |
| **Contract Management Agent** | any person appointed by the Departments in accordance with clause 29.3 |
| **Control** | means ‘control’ as defined in section 50AA of the Corporations Act, provided that:   1. in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of a majority of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation; 2. in the case of a trustee of a trust, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or removal of the trustee of the trust, the composition of the board of directors of the trustee, the voting rights of the majority of units of the trust or the management of the affairs of the trust or the business operated by that trust; 3. in the case of a partnership, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the management of the affairs of the partnership; and 4. in the case of the Recipient, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly the manner in which the Project is developed, constructed, implemented or operated.   In each case, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise. |
| **Consequential Loss** | means any loss:   1. from the relevant breach act or omission, that does not arise naturally according to the usual course of things, whether or not such loss may reasonably be supposed to have been in the contemplation of the of the parties at the time they entered this Funding Agreement; 2. that is special or punitive; 3. that is loss of profit, opportunity or revenue (excluding the Funds); or 4. without limiting paragraphs 1, 2 or 3 above, any diminution in the value of an asset or a business or any increased finance costs or loss of anticipated savings associated with this Funding Agreement not being performed in accordance with its terms. |
| **Controller** | has the meaning given to it in section 9 of the Corporations Act. |
| **Coronavirus Pandemic** | means the 2019 novel coronavirus, coronavirus disease, COVID-19, severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2. |
| **Coronavirus Event** | means:   1. the occurrence or transmission of the Coronavirus Pandemic; or 2. any travel disruption or quarantine directly caused by the Coronavirus Pandemic,   subsisting on or after the date of this Funding Agreement, provided that if such Coronavirus Event commenced prior to the date of this Funding Agreement, it will be deemed to have commenced on and from the date of this Funding Agreement. |
| **Corporations Act** | means the *Corporations Act 2001* (Cth). |
| **Cure Plan** | has the meaning given in clause 22.1(b). |
| **Data Request** | means a request made by either or both of the Departments for the Recipient to produce certain data relating to the Project. Such data may include, but is not limited to:   1. data relating to hydrogen storage, consumption and usage; 2. energy usage; 3. emissions abatement; 4. vehicle usage; or 5. any other data that either or both of the Departments may require in relation to the Project. |
| **Data Sharing Schedule** | means the terms and conditions specified in Schedule 8, governing the sharing and use of data under this Funding Agreement). |
| **Dealing** | has the meaning given in clause 16.2(a). |
| **Debt Financier** | means:   1. a financial institution providing debt finance on a limited recourse basis to the Recipient for the purpose of funding construction of the Project; and 2. any security trustee or agent of any such financial institution. |
| **Department** | means either The NSW Treasury or DELWP, as the context permits. |
| **Departments** | means both The NSW Treasury and DELWP. |
| **Department Confidential Information** | means Confidential Information provided by:   1. The NSW Treasury; and/or 2. DELWP,   to the Recipient under or in connection with this Funding Agreement. |
| **Department Observer** | means the representative(s) of a Department or the Departments who observe any meeting of the Project Steering Committee. |
| **Determination Notice** | has the meaning given to that term in clause 6.2(c)[.](#_bookmark24) |
| **Dispute** | means a dispute, controversy or claim arising out of, relating to, or in connection with this Funding Agreement, including (without limitation) any question regarding its existence, validity or termination. |
| **Distributed Funds** | has the meaning given in item [1.2](#_bookmark173) of Schedule [5.](#_bookmark190) |
| **Draft Calculations** | has the meaning given in item [1.2](#_bookmark173) of Schedule [5.](#_bookmark190) |
| **Eligible Contract Expenditure** | is the cost of any activities to support the Project performed for the Recipient by another organisation. |
| **Eligible Expenditure** | means expenditure (inclusive of GST but less related input tax credits the Recipient or its representative member is entitled to claim in relation to that expenditure) incurred by, or whether the context requires, expected to be incurred by, the Recipient on the Project after Commencement Date that:   1. qualifies as eligible expenditure under item 2 of Schedule 3; or 2. the Departments otherwise approve (in their absolute discretion) as eligible expenditure for the purposes of this Funding Agreement. |
| **End Date** | means the earlier of:   1. Sunset Date; or 2. earlier expiry or termination of this Funding Agreement. |
| **Expert** | means an appropriately qualified independent expert appointed by the Recipient and approved by the Departments, in each case acting reasonably. |
| **External Controller** | means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity. |
| **Financing Agreement** | an agreement in favour of the Recipient’s Debt Financier, in a form and substance approved by the Departments, acting reasonably. |
| **Financial Close** | has the meaning given to that term in Schedule [5.](#_bookmark190) |
| **FIRB** | means the Foreign Investment Review Board. |
| **FIRB Approval** | In respect of an action means:   1. the relevant person has received written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia stating that the Commonwealth Government does not object to the action taking place; 2. the Treasurer of the Commonwealth of Australia becomes precluded from making an order in relation to such action; or 3. if an interim order is made under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) in respect of the relevant period, the subsequent period from making a final order prohibiting such action elapses without a final order being made. |
| **Force Majeure Event** | has the meaning given to that term in clause 21.1[.](#_bookmark84) |
| **Funding Agreement** | means this agreement and includes any schedules, annexures, or amendments to it. |
| **Funds** | the funds paid or payable by the Departments to the Recipient under this Funding Agreement (as the context requires). |
| **Funds Payment Request** | a funds payment request in the form set out in Schedule [4.](#_bookmark1) |
| **Good Electricity Industry Practice** | has the meaning given to that term in the NER. |
| **Good Industry Practice** | practices followed when works and services are undertaken in accordance with all of the following:   1. in a sound and workmanlike manner; 2. with due care and skill; 3. using materials of merchantable quality which are fit for the Project and enable it to achieve the Outcomes; 4. to the standard expected of an experienced, suitably qualified and competent contractor experienced in: 5. the design, engineering, procurement, supply, construction, testing, commissioning, maintenance and operation of projects and infrastructure comparable to the Project; 6. performing works; and 7. providing services,   of the skill and quality to be expected of an experienced, suitably qualified continually compliant and competent contract, with particular experience in Australia,   1. in accordance with all applicable Laws; and 2. consistently with best practice for the performance of design, engineering, procurement, supply, construction, testing, commissioning, maintaining and operating of a facility that has the same or similar performance requirements of the Project and the performance of: 3. design, engineering, procurement, supply, construction and testing of works that are similar to the works to be undertaken with respect to the Project; and 4. commissioning, maintaining and operating equipment that is similar to the equipment to be commissioned, maintained and operated with respect to the Project. |
| **Grant Funding Percentage** | means the Total Funds as a percentage of the Total Estimated Costs as established in the Initial Budget and listed in clause 2.1 of Schedule 1. |
| **GST Law** | has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). |
| **Guidelines** | means [*Drafting note: insert date*], as listed in item 4 of the Project Details and annexed to this Funding Agreement at Schedule 7. |
| **Initial Budget** | the Budget for the Project approved by the Departments as at the Commencement Date, attached at Attachment 1. |
| **Insolvency Event** | means the occurrence of any of the following events:   1. in relation to a corporation (including in its capacity as trustee of a trust): 2. its Liquidation; 3. the appointment of an External Controller to the corporation or any of its property; 4. it entering into or resolving to enter into a Scheme; 5. it ceasing or threatening to cease carrying on its business; 6. it becoming insolvent within the meaning of section 95A of the Corporations Act, presumed to be insolvent under sub-section 459C(2) of the Corporations Act or otherwise stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts as and when they become due and payable; 7. it taken to have failed to comply with a statutory demand as a result of sub-section 459F(1) of the Corporations Act; 8. any distress, attachment or writ of execution in an amount greater than $[*Drafting note: insert contract value*] being issued, levied or enforced against it or its property; 9. any judgment in an amount of greater than $[ *Drafting note: insert contract value*] being issued, levied or enforced against it or its property that is not set aside, satisfied or stayed (through appeal or otherwise) within 10 Business Days; or 10. any security interest being enforced against its property in respect of a liability in excess of $[ *Drafting note: insert contract value*] at any time; or 11. in relation to any person, the person is served with a Claim or anything analogous to or having a similar effect to anything described above in this definition under the law of the relevant jurisdiction. |
| **Intellectual Property Rights** | means all intellectual property rights, including:   1. copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential; 2. any application or right to apply for registration of any of the rights referred to in paragraph [1;](#_bookmark9) and 3. all rights of a similar nature to any of the rights in paragraphs [1](#_bookmark9) and [2](#_bookmark10) which may subsist in Australia or elsewhere,   whether or not such rights are registered or capable of being registered. |
| **Interest Rate** | means the daily 11am cash rate quoted on Reuters page RBA30. |
| **Key Project Subcontractor(s)** | means the:   1. key project subcontractors as at the Commencement Date, identified in item 14 of the Project Details; and 2. any other Subcontractor of the Recipient throughout the term of this Funding Agreement that is: 3. a refuelling station operator; 4. a freight and logistics operator; 5. a hydrogen truck original equipment manufacturer (OEM); 6. a freight customer; or 7. as otherwise notified as a Key Project Subcontractor by the Departments from time to time. |
| **Knowledge Sharing Agent** | means any person or entity appointed by the Department in accordance with clause 29.4[.](#_bookmark148) |
| **Knowledge Sharing Deliverables** | means the knowledge sharing deliverables set out in the Knowledge Sharing Plan. |
| **Knowledge Sharing Plan** | means the knowledge sharing plan attached as Schedule [6](#_bookmark191) (including the Knowledge Sharing Deliverables set out in the Knowledge Sharing Plan), as varied by agreement in writing between the parties from time to time. |
| **Law** | means:   1. any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Funding Agreement is or is to be carried out or regulated, including the NER and the rules of any recognised stock exchange; 2. any applicable law, whether of a legislative, equitable or common law nature; and 3. any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of an Authority. |
| **Legally Commit(ted)** | means at any time, a present or accrued obligation on the Recipient under contract or at Law to pay money to a third party.  It does not include any future obligation to make payment to a third party:   1. which is subject to any outstanding condition to payment (other than the expiration of time) or other contingency that has not been satisfied at that time; or 2. which the Recipient has a right to cancel, suspend or terminate under the contract or under Law. |
| **Licensed Materials** | means:   1. Pre-existing Material included, embodied in or attached to the Agreement Material; 2. Third Party Material, included, embodied in or attached to the Agreement Material; and 3. Agreement Material. |
| **Liquidation** | means a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken (including the calling of meetings or the filing of applications), orders are made, or resolutions are passed to give effect to any of the above. |
| **Material** | includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights. |
| **Merit Criteria** | means the merit criteria for an Application referred to in the Guidelines. |
| **Milestones** | means the milestones set out in item [1.3](#_bookmark157) of [Schedule 1.](#_bookmark152) |
| **Milestone Long Stop Date** | means, in respect of a Milestone, the date specified in item [1.3](#_bookmark157) in Schedule [1](#_bookmark154) for completion of that Milestone. |
| **Milestone Report** | has the meaning given in item [3.1](#_bookmark164) of [Schedule 1.](#_bookmark152) |
| **Milestone Reviewer** | means the applicable milestone reviewer set out in item [1.3](#_bookmark157) of [Schedule 1 as approved by the Departments, who is an officer of the Recipient or independent third party with the proper authority to review the Milestones as required by this Funding Agreement.](#_bookmark152) |
| **Minor Variation** | means a variation:   1. by way of extension to the dates specified in the Project Details or [Schedule 1](#_bookmark152) (other than a variation to the Milestone Long Stop Dates); 2. to elements of the Project as described in item [1.1](#_bookmark155) of [Schedule 1;](#_bookmark152) or 3. to the Knowledge Sharing Plan,   that does not and is not likely to materially affect the Project or the achievement of the Outcomes. |
| **Modern Slavery** | has the meaning given in the Modern Slavery Laws and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons. |
| **Modern Slavery Laws** | means, as applicable, *the Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW). |
| **Moral Rights** | has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute and that exists or comes to exist anywhere in the world. |
| **National Electricity Law** | means the national electricity law introduced by the *National Electricity (New South Wales) Act 1997 (NSW)* and any regulations made under it, as amended from time to time. |
| **NER** | the National Electricity Rules made under the National Electricity Law. |
| **Notice of Dispute** | means a notice setting out the details of any Dispute in accordance with clause 25. |
| **Notice of Reduction** | has the meaning given in clause 22.1(a)(3). |
| **NSW Government** | means the government of the State of New South Wales, including any governmental agency, department or authority of New South Wales. |
| **Operating Parameters** | means those operating parameters for the Project as set out in Schedule 2 (as may be amended from time to time with the written consent of the Departments). |
| **Other Contributions** | means the financial and in-kind contributions specified in items [2.4](#_bookmark161) and  [2.5](#_bookmark162) of [Schedule 1, if any.](#_bookmark152) |
| **Outcomes** | means the outcomes for the Project as set out in item [1.2](#_bookmark156) of [Schedule](#_bookmark152) [1.](#_bookmark152) |
| **Overseas and Interjurisdictional Expenditure** | any expenditure of Funds by the Recipient or a Subcontractor that is:   1. outside of New South Wales and Victoria; and/or 2. to a ‘foreign company’ as defined under section 9 of the Corporations Act. |
| **Payment Criteria** | means the payment criteria specified in clause 6.3[.](#_bookmark25) |
| **Personal Information** | means:   1. information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is: 2. true or not; and 3. recorded in a material form or not; and 4. information defined as such under applicable Privacy Laws. |
| **Personnel** | means any employee, officer, agent or professional adviser or subcontractor of that agent or professional adviser. |
| **Plan** | means a plan required to be provided by the Recipient under item [3.2](#_bookmark165) of [Schedule 1, or otherwise in accordance with this Funding Agreement.](#_bookmark152) |
| **Pre-existing Material** | means Material a party makes available for the purposes of the Project or this Funding Agreement:   1. owned by a party before execution of this Funding Agreement; or 2. is brought into existence independently of this Funding Agreement or Project. |
| **Privacy Law** | means:   1. the *Privacy Act 1988* (Cth); 2. the *Privacy and Personal Information Protection Act 1998* (NSW); 3. the *Health Records and Information Privacy Act 2002* (NSW); 4. the *Privacy and Data Protection Act 2014* (Vic); 5. the *Health Records Act 2001* (Vic); 6. any legislation (to the extent that such legislation applies to Recipient, its Personnel, Subcontractors or any other recipient of Personal Information) from time to time in force in: 7. any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and 8. any other jurisdiction (to the extent that the Customer or any Personal Information or the Supplier is subject to the laws of that jurisdiction),   affecting privacy or Personal Information, provided that the Supplier ensures that it complies at all times with the Privacy Laws applicable in New South Wales and Victoria; and   1. any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (1), (2), (3), (4), (5) and (6) as amended from time to time. |
| **Project** | means the Project described [Schedule 1.](#_bookmark152) |
| **Project Completion Date** | means the date specified in item [12](#_bookmark2) of the Project Details. |
| **Project Details** | means the Project Details set out in clause 1. |
| **Project Information** | has the meaning given to that term in clause 20(f). |
| **Project Steering Committee** | means a steering committee, group or body established for the purposes of overseeing and/or coordinating the delivery of the Project (including in relation to the development and construction of the Project). |
| **Recipient** | means the entity specified in in item 3 of the Project Details. |
| **Recipient Confidential Information** | means the Confidential Information of the Recipient as characterised as such by the Recipient in accordance with clause 5.1(b). |
| **Recipient Contributions** | means the financial contributions specified in item [2.3](#_bookmark160) of [Schedule 1, if any.](#_bookmark152) |
| **Record(s)** | means any document within the meaning of the:   1. *Evidence Act 2008* (Vic); or 2. *Evidence Act 1995* (NSW),   and includes without limitation:   1. anything on which there is writing; 2. anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; 3. anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or 4. a map, plan, drawing or photograph;   created, managed, maintained, brought into existence or otherwise acquired or used by the Recipient, its Personnel or Subcontractors in relation to the Funding, the Activity, or the performance of the Recipient’s obligations under this Funding Agreement. |
| **Refund Amount** | means refund amount calculated in accordance with clause [1.4(b)](#_bookmark176) of Schedule 5. |
| **Related Body Corporate** | has the meaning given to ‘related body corporate’ in the Corporations Act, but on the basis that ‘subsidiary’ has the meaning given to Subsidiary in this Funding Agreement and that ‘body corporate’ includes any entity or trust. |
| **Related Party** | has the meaning given to that term in section 228 of the Corporations Act, provided that for purposes of this definition:   1. ‘public company’ refers to any body corporate, trust or partnership; or 2. ‘director’ includes a shareholder (in the case of a company), unitholder or beneficiary (in the case of a trust) and partner (in the case of a partnership; and 3. ‘control’ has the meaning set out in this Funding Agreement. |
| **Report** | means any report to be provided by the Recipient to either or both of the Departments under this Funding Agreement. |
| **Renewable Hydrogen** | also known as ‘green hydrogen’, meaning hydrogen that is produced from:   1. electrolysis powered with 100% renewable electricity; or 2. steam methane reforming that is using 100% responsibly sourced renewable biomethane.   Hydrogen will not be considered renewable hydrogen if any input to the production process utilises or is otherwise derived using wood waste or biomass from native forests (including electricity or feedstock).  For the avoidance of doubt, all inputs to the production process for the renewable hydrogen used as part of the Initiative must be eligible renewable energy sources as defined by *Victoria’s Renewable Energy (Jobs and Investment) Act 2017* (VIC). |
| **Scheme** | means an arrangement, assignment, composition, merger, amalgamation, reconstruction, or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act), other than for the purposes of a solvent reconstruction or amalgamation as approved by The Treasury and separately DELWP (in their discretion). |
| **Segregated Bank Account** | has the meaning given to that term in clause 8.2(a)[.](#_bookmark32) |
| **Specified Personnel** | means the nominated Personnel of the Recipient who will be carrying out the Project, as identified at item [13](#_bookmark3) of the Project Details. |
| **Subcontractor Notice Period** | has the meaning given in clause 28.1(a). |
| **Statement of Compliance** | a statement, certificate or letter that:   1. is issued by a suitably qualified independent firm approved by the: 2. Departments (acting reasonably) if the Statement of Compliance is required by both of the Departments; or 3. relevant Department requesting the Statement of Compliance, if requested by one Department only,   with demonstrated relevant market experience, suitably qualified personnel and capability in preparing similar statements, certificates or letters;   1. is able to be relied upon by either and/or both of the Departments with reliance language acceptable to it; and 2. certifies that the relevant Plan: 3. has been developed satisfactorily; 4. complies with all applicable Laws, including but without limitation all work, health and safety laws; 5. is prepared in accordance with Good Industry Practice; 6. where relevant, is prepared in accordance with Good Electricity Industry Practice; and 7. is being appropriately implemented complying with each of the points above. |
| **Subcontractor** | any person to which the Recipient has subcontracted any of its obligations in connection with the Project or this Funding Agreement, which includes for the avoidance of doubt any Key Project Subcontractors. |
| **Subcontractor Notice** | means a written notice provided by the Recipient to the Departments in accordance with clause 28.1(a). |
| **Subsidiary** | has the meaning given to ‘subsidiary’ in the Corporations Act but so that:   1. a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and 2. a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation. |
| **Sunset Completion Date** | means the date specified in item 12A of the Project Details. |
| **Sunset Date** | means the later of:   1. the date on which the Recipient has performed all of its obligations under this Funding Agreement (including the provision of all reports to each of The NSW Treasury and DELWP’s satisfaction); and 2. the Sunset Completion Date. |
| **Termination Events** | has the meaning given to that term in clause 23.1. |
| **Third Party Material** | Material owned by another person that is:   1. included, embodied in or attached to the Agreement Material; or 2. used in undertaking the Project. |
| **Those Indemnified** | has the meaning given in clause 14(a). |
| **Total Estimated Costs** | the total amount of Eligible Expenditure as set out in the Initial Budget. |
| **Total Funds** | the maximum aggregate amount of Funds payable by the Departments under this Funding Agreement, as set out in item [2.1](#_bookmark158) of [Schedule 1](#_bookmark152) (and may be reduced in accordance with this Funding Agreement). |
| **Trust** | has the meaning given to that term in clause 13.2. |
| **Undisbursed Funds** | means the Total Funds less any amounts already paid to the Recipient under this Funding Agreement. |
| **Unused Proportion** | the proportion that the sum of the unused Recipient Contributions and Other Contributions represents when compared to the total Recipient Contributions and Other Contributions. |
| **Update Period** | the period of six months commencing on the Commencement Date and each six month period thereafter occurring partly or wholly during the Term. |
| **Victorian Government** | means the government of the State of Victoria, including any governmental agency, department or authority of Victoria. |
| **Visitors** | has the meaning given in clause 15.1(r)[.](#_bookmark63) |
| **Warranty** | a representation or warranty given under clause 13[.](#_bookmark47) |
| **WHS Laws** | all applicable Laws relating to work health and safety, dangerous goods and hazardous materials, and electrical safety, including (without limitation):   1. *Work Health and Safety Act 2011* (Cth); 2. *Work Health and Safety Regulations 2011* (Cth); 3. *Work Health and Safety Act 2011* (NSW) and associated regulations, as enacted or amended from time to time; 4. *Occupational Health and Safety Act 2004* (Vic); 5. *Dangerous Goods (Storage and Handling) Regulations 2012* (Vic); 6. *Dangerous Goods (Transport by Road or Rail) Regulations 2018* (Vic); 7. *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW); and 8. *Dangerous Goods (Road and Rail Transport*) Regulation 2014 (NSW). |
| **Work Health and Safety Plan** | has the meaning set out in Item 3.2 of Schedule 1. |

# **Interpretation**

In this Funding Agreement:

### headings and bold type are for convenience only and do not affect the interpretation of this Funding Agreement;

### the singular includes the plural and the plural includes the singular;

### other parts of speech and grammatical forms of a word or phrase defined in this Funding Agreement have a corresponding meaning;

### an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual;

### an expression importing an entity includes any person, company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual;

### a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Funding Agreement;

### a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;

### a reference to a document includes all amendments or supplements to, or replacements, assignments, transfers or novations of, that document;

### a reference to a party to a document includes that party’s successors and permitted assignees;

### a reference to an agreement other than this Funding Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;

### no provision of this Funding Agreement will be construed adversely to a party because that party was responsible for the preparation of this Funding Agreement or that provision;

### a reference to a body, other than a party to this Funding Agreement (including an institute, association or Authority), whether statutory or not:

* + - 1. which ceases to exist; or
      2. whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

### if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

### if an act prescribed under this Funding Agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;

### a reference to time is a reference to Sydney time; and

### a reference to $ is to Australian currency unless denominated otherwise.

# **Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

# **Inclusive expressions**

Specifying anything in this Funding Agreement after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

# **Agreement components and inconsistency**

This Funding Agreement includes any schedule or attachment. In the event of an inconsistency between the Project Details and any other part of this Funding Agreement, that other part of this Funding Agreement will prevail to the extent of the inconsistency.

# **Term**

### This Funding Agreement begins on the Commencement Date and expires on the End Date.

### The parties acknowledge that the Project will:

* + - 1. become operational on the Project Completion Date; and
      2. continue operating in accordance with the terms of this Funding Agreement and, without limitation, the Operating Parameters until the Sunset Date,

unless terminated prior to the Sunset Date.

# **Recipient to undertake the Project**

### Subject to the terms of this Funding Agreement, the Recipient must use reasonable endeavours to:

* + - 1. undertake the Project and achieve the Outcomes;
      2. once the Project Completion Date is achieved and the Project becomes operational, operate the Project in accordance with this Funding Agreement and Operating Parameters and any plan set out in clause [3.2](#_bookmark165) of [Schedule 1;](#_bookmark152)
      3. progress the Project in a timely and expeditious manner;
      4. meet the Milestone Long Stop Dates for each Milestone; and
      5. complete and operationalise the Project by the Project Completion Date.

### The Recipient must:

* + - 1. notify the Departments in writing, as soon as reasonably practicable of any material delay or anticipated material delay to the progress of the Project or achievement of a Milestone or an Outcome, with such notice to include:
         1. the reason for the material delay;
         2. the anticipated impact on the Project; and
         3. the steps the Recipient is taking or will take to overcome the material delay; and
      2. keep the Departments updated as to the status of any such material delay.

### If a delay is notified to the Departments under clause 4(b), the Departments may at their absolute discretion:

* + - 1. notify the Recipient in writing of a period of extension to complete the Milestone and vary this Funding Agreement in accordance with clause 10;
      2. notify the Recipient in writing of:
         1. any reduction in the scope of the Project in accordance with clause 22.1; and
         2. any adjustment to the Funds for the Recipient to complete the reduced Project under clause 22.1; and
         3. vary this Funding Agreement in accordance with clause 10; or
      3. terminate this Funding Agreement under clause 23 or take such other steps as are available under this Agreement or at Law.

### The Recipient is required to comply with all timeframes for progressing and completing the Project as set out in, and pursuant to the terms of, this Funding Agreement.

### Without limiting the Recipient’s obligations under clause 4(b), within 20 Business Days’ of the end of each Update Period the Recipient must provide the Departments with a notice:

* + - 1. identifying any revisions made to the expected achievement date for a Milestone or Outcome during that Update Period; and
      2. detailing any Project Activities undertaken in respect of the Project during the Update Period.

### The Recipient must promptly notify the Departments if, after Project Completion Date but before the Sunset Date, the Project ceases to operate in accordance with:

* + - 1. this Funding Agreement; or
      2. the Operating Parameters,

for more than:

* + - 1. 7 consecutive days; or
      2. 21 days in aggregate in any 3-month period.

If requested by the either or both of the Departments, the Recipient must promptly provide to the relevant Department(s) information about the reasons for the divergence from the Operating Parameters or Funding Agreement. This clause is without limitation to, and does not constitute a waiver of, any other right the Departments (jointly and separately) have under this Funding Agreement or at Law including for any breach or otherwise by the Recipient.

# **Knowledge sharing**

# **Knowledge Sharing Plan**

### The Recipient must:

### in consultation with the Departments, refine, implement and comply with the Knowledge Sharing Plan; and

### as reasonably required by the either or both of the Departments:

### participate in relevant meetings, conferences, seminars, workshops, surveys and interviews;

### deliver presentations and publish reports; and

### provide briefings to the Departments (including their staff) and other relevant industry forums, on Project progress and achievement of the Outcomes.

### The Recipient must categorise the documentation and information it provides to either or both of the Departments as follows:

### **public unrestricted**: information that may be shared freely within and between the Departments, with industry participants, and with the public in general;

### **public restricted**: information that may be shared freely within and between the Departments, with industry participants, and with the public in general, subject to any reasonable restrictions specified in the Knowledge Sharing Plan; and

### **Recipient Confidential Information**: information that may only be shared in accordance with clause 20.

### Either or both of the Departments (acting reasonably) may, on written demand, require the Recipient, either through lessons learnt reports (where applicable) or ad hoc reports, to cover particular topics related to the Project (or a portfolio of activities related to the Project).

### To avoid doubt, it is the Recipient’s responsibility to ensure that any Project documentation or information (including any reports) prepared for public release does not contain any Recipient Confidential Information.

### In addition to the characterisation by the Recipient under clause 5.1(b), the Recipient must also mark any document or information it provides pursuant to the Knowledge Sharing Plan that it considers to be commercially sensitive as ‘Commercially Sensitive Information’ before it is submitted to either or both of the Departments or the Departments' Knowledge Sharing Agent.

# **Data Requirements**

### In addition to the information required under the Knowledge Sharing Plan or with respect to the Project, either or both of the Departments may at any time submit a Data Request to the Recipient. The Recipient must use its reasonable endeavours to make available the required data under the Data Request.

### Within 10 Business Days’ of the submission of the Data Request, the Recipient must confirm whether the data is available and able to be extracted. If the Recipient confirms that the data:

* + - 1. is available and able to be extracted, then the data must be provided to the Departments in accordance with the terms of this Funding Agreement, including without limitation, the Data Sharing Schedule; or
      2. is not available and unable to be extracted, then the Recipient must promptly provide written reasons to substantiate its assessment. The relevant Department(s) may request further information or detail and may direct the Recipient, acting reasonably, to undertake further action to provide the information in the Data Request.

### The Recipient acknowledges that all data shared under this clause is subject to the requirements of clause 20(f).

### Without liability, a Data Request made by either or both of the Departments may, at any time, be withdrawn by the relevant Department(s) making the request in their absolute discretion.

# **Funds**

# **Funds**

### Subject to satisfaction of the Payment Criteria, the Departments will pay the Funds to the Recipient in at the times specified in and in accordance with item [2.2](#_bookmark159) of [Schedule 1](#_bookmark152) and this clause 6.

### Notwithstanding any other provision of this Funding Agreement, at all times the:

### Departments' total liability under or in connection with this Funding Agreement, including all the Funds paid or payable, will not exceed the Total Funds, unless otherwise agreed by the parties in writing; and

### Total Funds must be less than or equal to $20 million.

### Each Department’s separate total liability under or in connection with this Funding Agreement, including all the Funds paid or payable by that Department, will not exceed 50% of the Total Funds, unless otherwise agreed by the parties in writing.

### The NSW Treasury may offset any money due for payment by The NSW Treasury to the Recipient under this Funding Agreement against any money owed by the Recipient to:

* + - 1. The NSW Treasury under this Funding Agreement or any other agreement under which The NSW Treasury provides funding to the Recipient; or
      2. the NSW Government under another agreement.

### DELWP may offset any money due for payment by DELWP to the Recipient under this Funding Agreement against any money owed by the Recipient to:

* + - 1. DELWP under this Funding Agreement or any other agreement under which DELWP provides funding to the Recipient; or
      2. the Victorian Government under another agreement.

### Following Financial Close, the Total Funds may be adjusted in accordance with the process set out in Schedule 5.

### The Recipient acknowledges that each Department is separately liable for only 50% of the relevant Funds payable with respect to each Milestone, unless otherwise agreed by the parties in writing.

# **Funds Payment Request**

### Upon achievement of any relevant Milestone in accordance with item [1.3](#_bookmark157) of [Schedule 1,](#_bookmark152) the Recipient may submit a request for payment of the Funds in the form of a Funds Payment Request.

### A Funds Payment Request must be sent to both The NSW Treasury and DELWP simultaneously or promptly in succession:

* + - 1. to the Address for Invoices listed in Item 17 of the Project Details; and
      2. representing each of the Department’s share of 50% of the Funds payable for that relevant Milestone,

so that each Funds Payment Request accurately represents the 50% portion payable by The NSW Treasury and separately DELWP of the aggregate Funds payable by the Departments for that relevant Milestone.

### The NSW Treasury and separately DELWP must, within 20 Business Days’ of its receipt from the Recipient of:

* + - 1. the Funds Payment Request; and
      2. all other information reasonably required to determine by The NSW Treasury and/or DELWP whether or not the Payment Criteria for a Milestone are satisfied,

provide the Recipient with a notice setting out:

* + - 1. The NSW Treasury's and separately DELWP’s determination as to whether or not the Payment Criteria has been satisfied; and
      2. if either The NSW Treasury and/or DELWP have determined that the Payment Criteria has not been satisfied, the reasons for that determination,

##### (Determination Notice).

**Note:** Where a Department determines that the Payment Criteria has been satisfied, the Recipient may invoice that Department in accordance with clause 7.

Where a Department determines that the Payment Criteria has not been satisfied, and the payment requested is not approved in whole or in part and the parties disagree with this decision, the parties may refer the question of whether the Payment Criteria has been satisfied to an Expert in accordance with clause 6.4.

# **Payment Criteria**

The Recipient must satisfy the following Payment Criteria, each in a form and substance that is acceptable to The NSW Treasury and separately DELWP, as a condition precedent to payment or release of the Funds payable by The NSW Treasury and DELWP in connection with each Milestone:

### the Recipient must have submitted a Funds Payment Request;

### the Recipient must have:

### achieved the relevant Milestone;

### provided the relevant Milestone Report to the Departments; and

### provided a report for the benefit of the Departments from a Milestone Reviewer confirming that, in the Milestone Reviewer’s opinion, the relevant Milestone has been achieved in accordance with the terms of this Funding Agreement or as otherwise directed by, or agreed with, the Departments;

### the Recipient must have provided all plans, Reports and Knowledge Sharing Deliverables in accordance with this Funding Agreement due to be provided before the date for payment;

### the total Funds requested, when taken with all other Funds previously provided to the Recipient under this Funding Agreement, must not exceed the Total Funds; and

### both Departments jointly and separately, acting reasonably, must be satisfied that the Recipient is not in breach of this Funding Agreement at the relevant time.

# **Referral to Expert**

If either The NSW Treasury or DELWP determine under clause 6.2(c) that the Payment Criteria has not been satisfied, then either party may refer the Dispute to an Expert under clause 25.

# **Use of the Funds**

### Subject to clause 6.5(b), the Recipient must apply or Legally Commit the Funds only:

* + - 1. for Eligible Expenditure;
      2. in accordance with, and as contemplated by, the then-current Budget;
      3. so that at all times no more than the Grant Funding Percentage for total Eligible Expenditure incurred or expected to be incurred is sourced from the Funds; and
      4. in accordance with the terms and conditions set out in this Funding Agreement.

### The Recipient must provide the Departments with written notice prior to Legally Committing the Funds on any Overseas and Interjurisdictional Expenditure and follow the directions given by the Departments (acting reasonably) with respect to any Overseas and Interjurisdictional Expenditure. Any directions given by the Departments under this clause does not constitute a waiver, approval or consent with respect to any obligations the Recipient may have under this Funding Agreement or at Law.

# **Early payment of Undisbursed Funds**

The Departments may, in their sole discretion, pay to the Recipient or deposit into the Bank Account or Segregated Bank Account some or all of the Undisbursed Funds before the time otherwise specified for payment in this clause 6.

# **Invoices**

### The Recipient must submit an invoice within 5 Business Days’ of receipt of a Determination Notice given by The NSW Treasury or DELWP under clause 6.2(c). The invoice must be for the amount approved by The NSW Treasury or DELWP in the relevant Determination Notice.

### An invoice submitted by the Recipient must:

* + - 1. meet the requirements of a tax invoice as set out in the GST Law;
      2. be in a form approved by the party receiving the invoice (being either The NSW Treasury or DELWP); and
      3. set out:
         1. any reference number provided by The NSW Treasury or DELWP (as relevant) and Project title; and
         2. the amount of Funds to be paid by the party receiving the invoice (being either The NSW Treasury or DELWP), which is to be 50% of the Funds payable for that Milestone, together with the supporting documentation and any other evidence specified in [Schedule 1](#_bookmark152) or as requested by The NSW Treasury and/or DELWP.

### The Recipient must:

* + - 1. submit separate invoices to The NSW Treasury and DELWP to the email address listed in item [17](#_bookmark6) of the Project Details; and
      2. cooperate with any request by The NSW Treasury or DELWP with respect to invoicing and payment where The NSW Treasury or DELWP advise that they are moving to a different payment system.

### The NSW Treasury and separately DELWP must, within 30 Business Days’ of receipt of an invoice under this clause 7:

* + - 1. deposit the relevant Funds payable by The NSW Treasury and separately DELWP upon achievement of that Milestone into the Bank Account or Segregated Bank Account; or
      2. authorise release of the Funds payable upon achievement of that Milestone from the Segregated Bank Account, as applicable.

# **Bank Account**

# **Bank Account requirements**

Unless the Departments otherwise agree in writing, the Recipient must:

### ensure that the Funds are held in an account in the Recipient’s name:

* + - 1. which is not controlled by any person other than the account bank, the Recipient, a Related Body Corporate of the Recipient or a Debt Financier; and
      2. with a deposit-taking institution in Australia authorised under the

*Banking Act 1959* (Cth) to carry on banking business in Australia

(**Bank Account**);

### notify the Departments of details sufficient to identify the Bank Account prior to receipt of any the Funds; and

### identify the receipt and expenditure of the Funds separately within the Recipient’s accounting Records so that at all times the Funds are identifiable and ascertainable.

# **Segregated Bank Account**

### If the Departments notify the Recipient of their intention to deposit Undisbursed Funds into the Recipient’s Bank Account under clause 6.6, the Recipient must, if requested by the Departments, establish a new Bank Account (**Segregated Bank Account**) that is:

* + - 1. established solely for the purposes of accounting for and administering any Funds paid to the Recipient by the Departments;
      2. an account that bears a rate of interest;
      3. separate from the Recipient’s or any other person’s operational accounts; and
      4. if requested by the Departments, governed by an account control deed between the Departments, the Recipient and the relevant bank, which limits the Recipient’s ability to withdraw Funds from the Segregated Bank Account without the Departments’ consent.

### At any time, if there are Funds in the Segregated Bank Account, the Recipient must:

* + - 1. if requested by the Departments, provide each Department (and the authorised deposit-taking institution) with:
         1. an authority for each Department to obtain any details relating to the use of the Segregated Bank Account; and
         2. a copy of any statement relating to the Segregated Bank Account, and any other reasonable details relating to use of the Segregated Bank Account; and
      2. notify each Department of any change of the Segregated Bank Account, provide each Department with details of the new account, and comply with this clause 8 in respect of the new account.

# **Withdrawal of funds from the Bank Account or Segregated Bank Account**

The Recipient must not withdraw or transfer funds from a Bank Account or Segregated Bank Account other than in accordance with this Funding Agreement.

# **Contributions**

### Other than with respect to payment of the Funds in accordance with this Funding Agreement, the Recipient is responsible for providing or securing all funds and resources, and bearing all costs necessary, to complete the Project (including on account of cost overruns).

### Unless otherwise agreed by the Departments and the Recipient in writing, the Recipient must ensure that:

* + - 1. the Recipient Contributions are provided and used for the Project in accordance with item [2.3](#_bookmark160) of [Schedule 1;](#_bookmark152) and
      2. any Other Contributions are provided and used for the Project in accordance with items [2.4](#_bookmark161) and [2.5](#_bookmark162) of [Schedule 1.](#_bookmark152)

# **Variations**

# **Variations**

Any variation of this Funding Agreement (including any Schedule) must be in writing and signed by all parties. Unless otherwise required by the Departments, a variation will be effected by completing and executing the form set out in Attachment 2.

# **Variation requests**

### The Recipient may request a variation of this Funding Agreement by providing the Departments with written details of the proposed variation.

### Subject to clause 10.2(c)(1), where the requested variation is a Minor Variation or a variation reasonably required to address a Force Majeure Event, the Departments will act reasonably in providing or withholding its consent.

### Each Department may provide or withhold their consent in their absolute discretion to the extent the requested variation:

* + - 1. is a change to a Milestone Long Stop Date (including a change to a Milestone Long Stop Date required to address a Force Majeure Event); or
      2. is otherwise not contemplated under clause 10.2(b).

# **Variations to Budget**

### In addition to clause 10.3(b), the Recipient:

### may, with prior written notice to the Departments, amend the Budget without the consent of the Departments if the amendment to the Budget is for minor changes derived from standard day to day requirements; and

### must not, without the prior written consent of the Departments (in their absolute discretion), amend the Budget for any changes except those under clause 10.3(a)(1).

### Without limitation to clause 10.3(a), the Recipient must not amend the Budget or otherwise apply or Legally Commit the Funds without the prior written consent of the Departments if such action would result in the total Eligible Expenditures incurred or expected to be incurred to be sourced from the Funds exceeding the Grant Funding Percentage.

### Within 20 Business Days’ of the end of each Update Period, the Recipient must provide to the Departments a notice identifying any amendments made to the Budget during that Update Period and attaching a copy of the amended Budget.

# **Reporting and plans**

# **Reporting obligations**

The Recipient must provide the Departments with:

### the Reports and plans in accordance with the requirements set out in items [3.1](#_bookmark164) and [3.2](#_bookmark165) of [Schedule 1](#_bookmark152) and in the form and substance satisfactory to the Departments (including details of any Knowledge Sharing Deliverables required in accordance with the Knowledge Sharing Plan);

### from time to time, at the time and in the manner reasonably required by either or both Departments, reports or any other information requested by the relevant Department or the Departments (including in relation to any significant developments concerning the Project or any significant delays or difficulties encountered in undertaking the Project); and

### if this Funding Agreement is terminated by the Departments then within 30 Business Days’ after the termination, a report for public release by either or both of the Departments explaining and including:

### the reasons for such termination;

* + - 1. the performance of the Project by the Recipient, its Personnel or Subcontractors;
      2. any reasons for the Abandonment of the Project;
      3. the information, knowledge and lessons learnt (both positive and negative) by the Recipient, its Personnel or Subcontractors with respect to the Project; and
      4. any other information reasonably requested by the Departments.

# **Review of Milestone Reports**

Where the Recipient is required to provide a Milestone Report under item [3.1](#_bookmark164) of [Schedule](#_bookmark152) [1,](#_bookmark152) unless otherwise specified by the Departments, the Recipient must provide to the Departments a report from a Milestone Reviewer for the benefit of the Departments, confirming that, in the Milestone Reviewer’s opinion, the relevant Milestone has been achieved in accordance with the terms of this Funding Agreement or as otherwise directed by, or agreed with, the Departments.

# **Certification of Plans**

### Where the Recipient is required to provide a risk management plan or work, health and safety plan, the Recipient must provide a Statement of Compliance on or prior to achievement of the first Milestone.

### Either or both Departments may require the Recipient to provide a Statement of Compliance for any other Plan or Milestone provided under this Funding Agreement. If required under this clause, the Recipient must provide the required Statement of Compliance by the date requested by the relevant Department or Departments (as applicable).

# **Acceptance or rejection of Reports or Plans**

### Within 30 Business Days’ of receiving a Report or Plan the Departments will endeavour to:

### accept the Report or Plan, if it considers acting reasonably, that the Report or Plan satisfies all the requirements set out under items [3.1](#_bookmark164) or [3.2](#_bookmark165) of [Schedule 1](#_bookmark152) (as applicable); or

### reject the Report or Plan, if it considers, acting reasonably, that the Report or Plan does not satisfy all the requirements set out under items [3.1](#_bookmark164) or [3.2](#_bookmark165) of [Schedule 1](#_bookmark152) (as applicable).

### If either or both of the Departments reject the Report or Plan, the relevant Department(s) must provide the Recipient with written reasons for the rejection and a date (acting reasonably) for the Recipient to reissue that Report or Plan. The Recipient must reissue that Report or Plan by that date in a form and substance that addresses the issues raised by the relevant Department(s) for the relevant Department(s) approval or rejection under clause 11.4(a).

### Any acceptance, rejection or direction(s) given by the Departments under this clause:

### does not constitute a waiver, approval or consent with respect to any obligations the Recipient may have under this Funding Agreement or at Law; or

### is without limitation to, and does not constitute a waiver of, any other right the Departments (jointly and separately) have under this Funding Agreement or at Law.

# **Project governance**

Where a Project Steering Committee is established, the parties acknowledge and agree that:

### the Recipient must promptly notify the Departments of the establishment of the Project Steering Committee;

### either or both Departments may, in their absolute discretion, send a Department Observer to observe any meeting of the Project Steering Committee;

### all decisions or recommendations made, and actions taken, by the Project Steering Committee are based on the Project Steering Committee’s own information, enquiries, independent advice, and/or considerations;

### the Department Observer will have no vote or other decision-making powers on behalf of the Project in connection with his or her attendance at any Project Steering Committee meeting;

### neither the Department Observer nor the Departments will have any liability to the Recipient in connection with the Department Observer’s attendance at any Project Steering Committee meeting; and

### the Project Steering Committee’s decisions, recommendations and actions will not bind the either or both of the Departments (jointly or severally).

# **Warranties**

# **Warranties**

The Recipient represents and warrants that:

### (**corporate power**): it has the corporate power to own its assets and to carry on its business as it is now being conducted;

### (**authority**): it has the right, power and authority to enter into, perform and observe its obligations under this Funding Agreement;

### (**authorisations**): the execution, delivery and performance of this Funding Agreement has been duly and validly authorised by it;

### (**binding obligations**): this Funding Agreement constitutes legal, valid and binding obligations and is enforceable in accordance with its terms, subject to laws generally affecting creditors’ rights and to principles of equity;

### (**transaction permitted**): at all times it will not be breaching any Law, requirement for Authorisation, Authorisation or agreement by signing and performing this Funding Agreement;

### (**no misleading information**): all information provided to either or both of the Departments (including in the Application):

### is true, correct and complete in all material respects; and

### is not misleading, at the time:

### given to the relevant Department or Departments; and

### throughout the term of this Funding Agreement, including at the Commencement Date and the date each Funds Payment Request is submitted (other than to the extent that the Recipient has given the Departments prior notice in writing otherwise);

### (**not a trustee**): it does not enter into this Funding Agreement as trustee of any trust, unless otherwise stated in this Funding Agreement;

### (**conflicts of interest**): to the best of its knowledge after making diligent inquiry, and except as otherwise disclosed to the Departments, at the Commencement Date and throughout the term of this Funding Agreement, no conflict of interest exists, may be objectively perceived to exist, or is likely to arise in the performance of its obligations under this Funding Agreement;

### (**employee entitlements**): it is not subject to any judicial decision against it relating to employee entitlements (not including decisions under appeal) where it has not paid the claim;

### (**Licensed Materials**): the Licensed Materials, and to the best of the Recipient’s knowledge any use by either or both of the Departments of the Licensed Materials in accordance with this Funding Agreement:

### will not infringe the Intellectual Property Rights or Moral Rights of any person or entity; and

### has all required consents to disclosure under clause 20(f).

### (**legal capacity**): it has full legal capacity to:

### own its own property;

### undertake the Project;

### enter into this Funding Agreement; and

### to carry out the transactions that each of the above contemplates (as applicable);

### (**financial capacity**): it has, or will have, sufficient funds to complete the Project;

### (**insolvency**): no Insolvency Event has occurred, and there are no reasonable grounds to suspect that an Insolvency Event will occur in respect of the Recipient; and

### (**qualifications**): the Recipient, its Personnel and Subcontractors are fit and proper people that have (without limitation) the necessary experience, skill, knowledge, expertise and competence to undertake the Project:

### consistent with Good Industry Practice;

### consistent with Good Electricity Industry Practice; and

### holding (or will hold when required) such licences, permits, Authorisations and/or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Project.

# **Trustee warranties**

If the Recipient enters into this Funding Agreement as a trustee of a trust (**Trust**), the Recipient represents and warrants that:

### the Trust has been duly established;

### the Departments have been provided with a true and correct copy of the trust deed of the Trust;

### the Recipient has been validly appointed as the sole trustee of the Trust and no action has been taken, or to its knowledge has been proposed, to remove it as trustee;

### the Recipient has full and valid power and authority to enter into this Funding Agreement and perform the obligations under it on behalf of the Trust;

### the Recipient has entered into this Funding Agreement for the proper administration of the Trust;

### the Recipient has obtained or duly satisfied all necessary resolutions, consents, approvals and procedures to enter into this Funding Agreement and perform the obligations under it;

### the Recipient has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Funding Agreement;

### the Recipient will not, without the consent of the Departments, do anything which:

### amends the trust deed of the Trust in any manner which is likely to be adverse to the interests of either or both of the Departments;

### reduces its right of indemnity from the assets of the Trust;

### effects or facilitates the termination of the Trust; or

### effects or facilitates the resettlement of the assets of the Trust; and

### the Recipient will exercise its right of indemnity under the trust deed in respect of liabilities it incurs under this Funding Agreement.

# **Reliance on Warranties**

### Each Warranty will, unless otherwise specified, be made on the signing of this Funding Agreement by the Recipient and be repeated each day of the term of this Funding Agreement.

### As soon as practicable after becoming aware of any matter which is likely to impact upon the accuracy of a Warranty, or the Recipient’s ability to comply with a Warranty, the Recipient must give written notice to the Departments detailing that matter and its likely impact on the Recipient’s ability to comply with that Warranty.

### The Recipient acknowledges and agrees that the Departments have both separately and together entered into this Funding Agreement and performs this Funding Agreement in reliance, separately and jointly, on the Warranties.

# **Liability and indemnity**

### The Recipient will at all times indemnify the Departments, the State of New South Wales, the State of Victoria and their Personnel (**Those Indemnified**) jointly and severally from and against any claim, loss, damage, cost, expense or liability (including legal costs on a solicitor and own client basis) arising out of or as a consequence of:

### the carrying out of works or services, or the supply of goods, in connection with the Project;

### the Licensed Materials (including the use of the Licensed Materials by either Department or both of the Departments or their Personnel, but excluding any Pre-existing Materials owned by either or both of the Departments) infringing or allegedly infringing the Intellectual Property Rights or Moral Rights of any person;

### without limiting the previous paragraphs any:

### breach of this Funding Agreement; or

### negligent or wrongful or unlawful act or omission, by or on the part of the any of the:

### Recipient;

### Related Parties; or

### Subcontractors,

including the respective Personnel for the entities noted from (i) to (iii) above; or

### any negligent or wrongful or unlawful act or omission on the part of the Recipient, Related Parties or their respective Personnel or Subcontractors.

### The Recipient’s liability to indemnify Those Indemnified will be reduced proportionally to the extent that any breach of this Funding Agreement by Those Indemnified, or any wrongful, unlawful or negligent act or omission of Those Indemnified, contributed to the loss.

### The Recipient acknowledges Those Indemnified in this Funding Agreement means Those Indemnified jointly and severally.

# **Undertakings and acknowledgements**

# **Undertakings**

The Recipient must:

### (**cooperation**): cooperate with and ensure that its Personnel and Subcontractors cooperate with, both Departments and other parties, and attend any meetings requested by either or both of the Departments;

### (**standards**): undertake and ensure that its Personnel and Subcontractors undertake the Project diligently, efficiently, safely and to a high professional standard and in accordance with this Funding Agreement, any applicable Law and best practice industry standards;

### (**Renewable Hydrogen**): throughout, under, or as a result of this Project, only produce, use or otherwise derive Renewable Hydrogen;

### (**reporting**): comply with the reporting requirements set out in item [3](#_bookmark163) of [Schedule](#_bookmark152) [1](#_bookmark152) and keep the Departments regularly and fully informed regarding progress of the Project;

### (**Laws**): comply with and ensure that its Personnel and Subcontractors comply with:

### all applicable Laws, including without limitation all applicable WHS Laws;

### the Work Health and Safety Plan required under item 3.2 of Schedule 1;

### obtain and maintain all relevant Authorisations required for the continued operation and performance of the Project, and provide evidence of those Authorisations on request by either or both of the Departments; and

### all relevant Australian industry standards, codes, best practice and guidelines or, where none apply, relevant international industry standards, best practice and guidelines;

### (**privacy**): comply with and ensure that its Personnel and Subcontractors comply with all reasonable directions of each or both of the Departments to the Recipient relating to each Departments' compliance with Privacy Law or resolution of any complaint alleging a breach of Privacy Law relating to the Project;

### (**NSW GIPA**): within 3 days of receiving a written request by The NSW Treasury, the Recipient or any relevant Personnel or Subcontractor, must provide The NSW Treasury with immediate access to information referred to in Section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) contained in Records held, and in such a medium, as The NSW Treasury may require. The NSW Treasury acknowledges that it will consult with the Recipient or relevant Subcontractor in accordance with the requirements of the *Government Information (Public Access) Act 2009* (NSW) before releasing any information obtained where required under the *Government Information (Public Access) Act 2009* (NSW);

### (**VIC** **FOI Act**) provide access to the Records during such time as they remain in the Recipient's possession or control to the Department and any other person authorised by the Department exercising rights under the *Freedom of Information Act 1982* (Vic), or any other Laws that apply to the Records;

### (**Intellectual Property**):

### on request from either or both of the Departments, provide the relevant Department or Departments with a copy of any Agreement Material in the format reasonably requested by the relevant Department or Departments;

### grant to, or, where the Recipient does not own the relevant Licensed Materials, use reasonable endeavours to obtain for the benefit of both of the Departments separately, a perpetual, irrevocable, world-wide, royalty-free, fee-free, non-exclusive licence to use, reproduce, adapt, modify, communicate, broadcast, distribute, publish, disseminate and sublicense the Licensed Materials (but excluding any Pre-existing Materials owned by either Department or both of the Departments) for the purposes of the Departments:

### exercising any right under this Funding Agreement;

### giving effect to the Knowledge Sharing Plan;

### exercising any purpose set out in the Guidelines;

### carrying out any objective under Part 6A the *Energy and Utilities Administration Act 1987* (NSW); or

### disclosing any of the Licensed Materials under section 41 of the *Energy and Utilities Administration Act 1987* (NSW);

### if someone claims, or either Department or both of the Departments reasonably believe that someone is likely to claim, that all or part of the Licensed Materials or their use in accordance with this Funding Agreement infringes the rights of a third person, including without limitation, that persons Intellectual Property Rights or Moral Rights, in addition to the indemnity under clause 14 and any other rights that the Departments may have (jointly or severally), the Recipient must promptly, at the Recipient’s expense:

### use its best efforts to secure the rights for both of the Departments separately to continue to use the affected Licensed Materials free of any claim or liability for infringement pursuant to the requirements under clause 15.1(i)(2); or

### replace or modify the affected Licensed Materials so that the Licensed Materials or the use of them does not infringe the rights of any other person without any degradation of the performance or quality of the affected Licensed Materials; and

### where required for the Project, and as agreed between the parties, the Recipient must comply with an Intellectual Property Management Plan as set out in item [3.2](#_bookmark165) of [Schedule 1](#_bookmark152) when undertaking the Project.

### (**Intellectual Property Consents**): obtain all consents, including without limitation any:

### Moral Rights consents or waivers; and

### consents necessary pursuant to clause 20(f); and

### consents necessary to perform its obligations under this Funding Agreement;

### (**adverse effect notification**):

### advise the Departments as soon as possible of any circumstances which have, or which are reasonably likely to have, a materially adverse effect on:

### the Recipient’s ability to comply with this Funding Agreement,

### the Recipient’s ability to complete the Project;

### the Recipients ability to obtain or comply with the any Authorisation; or

### either of the Departments' reputation, the NSW Government reputation or Victorian Government reputation; and

### notify the Department as soon as practicable of any significant concerns of local community groups of which the Recipient becomes aware;

### (**insurance**): in connection with the Project:

### maintain and require that all Personnel and Subcontractors maintain, the insurances that would be maintained by a prudent business undertaking the Project, including (without limitation) any other insurances as may be reasonably required by the Departments on notice from time to time; and

### if requested by either or both of the Departments, provide certificates or other sufficient evidence to satisfy the relevant Department or Departments that such insurances have been procured and maintained and diligently pursue any claim under those insurances;

### (**transactions with a Related Party**): ensure that any transaction between the Recipient and any Related Party with respect to the Project or this Agreement is on terms no less favourable to the Recipient than the terms of a comparable transaction negotiated at arms’ length with an unrelated third party;

### (**books and Records**): at its own cost, during the period of this Funding Agreement and for a period of seven years after the End Date, keep and ensure that any Personnel and Subcontractors keep, adequate books and Records in sufficient detail to enable:

### all receipts and payments related to the Project to be identified and reported to either or both of the Departments; and

### the amounts payable and paid by the Departments under this Funding Agreement to be determined or verified;

### (**monitoring**): meet with either or both of the Departments at the times and in the manner reasonably required by the Departments to discuss any issues in relation to this Funding Agreement or the Project;

### (**information**): provide any information reasonably requested by either or both of the Departments in connection with this Funding Agreement, including from any Personnel or Subcontractor, the Project or the Recipient’s compliance with the Outcomes;

### (**conflicts**): if, during the Project, a conflict of interest arises, is perceived to arise, or appears likely to arise, notify the Departments immediately in writing, make full disclosure of all relevant information relating to the conflict and take such steps as the Departments require to resolve or otherwise deal with the conflict;

### (**visitations**): during the term of this Funding Agreement and the 2 years after the End Date of this Funding Agreement:

### allow and provide either or both the Departments escorted visits by interested persons approved by the relevant Department or Departments or the Recipient (**Visitors**) to sites under the Recipient’s control where activities relating to the Project are conducted;

### use best endeavours to obtain permission for escorted visits by Visitors to sites not under the Recipient’s control where the activities relating to the Project are conducted;

### demonstrate the activities relating to or arising from the Project to Visitors and relevant technology and provide detailed explanations where requested;

### allow either or both of the Departments' representatives to be present at visits; and

### comply with and ensure that any Visitors comply with WHS Laws;

### (**Bank Account**): comply with the bank account requirements specified in clause 8;

### (**Department Policies**): carry out, and ensure that Personnel and any Subcontractors carry out, the Project in accordance with any policies, guidelines or documents as notified by either or both of the Departments from time to time. This includes, without limitation, with respect to any COVID-19 policies and induction requirements relating to any visitations by the Recipient, its Personnel or Subcontractors to any site owned, managed or controlled by either of the Departments;

### (**notification**): notwithstanding any other provision of this Funding Agreement, notify the Departments immediately if it becomes aware that:

### it has not undertaken the Project as required under this Funding Agreement or has not spent the Funds in accordance with this Funding Agreement;

### it has, or may have, committed a breach of this Funding Agreement, any Authorisation or any Law;

### it has received, or requested to receive, other funds from the NSW Government, Victorian Government or the Commonwealth for the Project;

### an Insolvency Event has occurred or is likely to occur with respect to the Recipient; and/or

### there is a change to any of the following (after the Commencement Date):

### Recipient Contributions;

### Other Contributions; or

### a legal and/or beneficial right to use, access or have title to any Asset for the Project (including any land rights), where such right was provided by an Authority.

# **Acknowledgements**

* + 1. The parties acknowledge and agree that:
       1. this Funding Agreement does not affect ownership of the Intellectual Property Rights in any Pre-existing Material or Third-Party Material; and
       2. all Intellectual Property Rights in Agreement Material vest in the Recipient upon creation.
    2. The Recipient acknowledges that The NSW Treasury may be required to publish on the NSW eTendering website certain information concerning this Funding Agreement in accordance with the *Government Information (Public Access) Act 2009* (NSW).

# **Change in Control and Transfer**

# **Change in Control**

### The Recipient must obtain the prior written consent of the Departments for any Change in Control of the Recipient during the term of this Funding Agreement.

### The Departments must not unreasonably withhold their consent under clause 16.1(a).

### For purposes of clause 16.1(b) and without limitation, it will be deemed reasonable to withhold consent where the Departments have formed the view, acting reasonably, that:

### the Change in Control would be inconsistent with the basis upon which the Departments formed a view that the Recipient:

### was eligible to receive the funds; or

### capable to undertake the Project; or

### met the Merit Criteria,

at the time its Application was assessed by the Departments;

### the Change in Control would have a material adverse effect on competition in the market for hydrogen refuelling infrastructure and hydrogen vehicles in NSW or Victoria;

### the Change in Control would result in the transferee not having the financial, technical or commercial capability to develop, construct, implement or operate the Project or perform the obligations under this Funding Agreement; or

### the Change in Control would materially reduce the likelihood of the Project achieving the Outcomes.

### The Recipient must provide the Departments with any information about the Change in Control reasonably requested by either or both of the Departments to allow the Departments to assess whether to provide its consent, including any information relating to the matters set out in clause 16.1(c).

### The Departments may require as a condition to its consent, that any person acquiring control of the Project or the Recipient (**Acquiring Party**, as defined in the definition of Change in Control) enters into a deed, with the form and substance acceptable to the Departments, undertaking that the Acquiring Party will ensure that the Recipient (or the new owner of the Project, as applicable) complies and will continue to comply with the Recipient’s obligations under this Funding Agreement.

# **Assignment, Novation and Transfer by Recipient**

### Subject to clause 16.3, the Recipient must not:

### transfer;

### assign;

### novate;

### create any security or other interest in; or

### deal in any other way,

with any of its right, title to or interest in this Funding Agreement (**Dealing**) without obtaining the prior written consent of the Departments (in their absolute discretion, with or without conditions). For the purposes of the Departments’ consent to a Dealing under this clause 16.2(a), the parties acknowledge and agree that:

### without limitation the Departments may consider the matters in clause 16.1(c); and

### clauses 16.1(d) and 16.1(e) (inclusive) apply in respect of a Dealing as if such Dealing were a Change in Control.

### Either of the Departments may assign their rights or novate any or all of their rights and obligations under this Funding Agreement if it is to an Authority or an entity where the ultimate legal or beneficial interest is held by an Authority. The Recipient agrees to execute any documents required by the Departments in order to give effect to an assignment or novation contemplated by this clause 16.2(b).

# **Debt Financier Security and Financing Agreement**

### The Recipient may grant a security interest over its right, title to or interest in this Funding Agreement to a Debt Financier by providing prior written notice to the Departments.

### The Departments must (at the request and cost of the Recipient) execute a Financing Agreement to the Recipient.

# **Assets**

### During the term of this Funding Agreement, the Recipient must (unless otherwise agreed by the Departments in writing):

### acquire and use any Asset only for the purposes of the Project or other purposes consistent with the Outcomes;

### obtain and maintain good title to all Assets (other than Assets which the Recipient leases);

### subject to clause 17(b), not encumber or dispose of any Asset without the Departments' prior written approval;

### hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;

### use all reasonable endeavours to maintain all Assets in good working order;

### maintain all appropriate insurances in respect of any Assets;

### if required by Law, maintain registration and licensing of all Assets;

### be fully responsible for, and bear all risks relating to, the use or disposal of all Assets; and

### if requested by the Departments, maintain an Assets register as specified by the Departments, and provide a copy of the register to the either or both of the Departments on request.

### Notwithstanding clause 17(a) the Recipient may, at any time, dispose of any Asset without the Departments' prior approval but with prior written notice to the Departments, where it relates to:

### the disposal of obsolete or redundant vehicles, plant and equipment;

### a disposal of an Asset for the purposes of replacing that Asset; or

### where that disposal is necessary for the maintenance of other Assets.

### If the Recipient sells or otherwise disposes of an Asset during the term of this Funding Agreement, the Departments may, at their discretion, recover from the Recipient:

### the proportion of the value of the Asset following depreciation calculated as at the date of sale or disposal which is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds; or

### the proportion of the market value of the Asset which is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds.

### On termination of this Funding Agreement (other than, to avoid doubt, the realisation of the Sunset Date of this Funding Agreement), either or both of the Departments may:

### recover from the Recipient the proportion of the value of the Asset following depreciation calculated as at the date of termination which is equivalent to the proportion of the purchase price of the Asset that was funded by the relevant Department or Departments from the Funds;

### recover from the Recipient the proportion of the market value of any Asset which is equivalent to the proportion of the purchase price of the Asset that was funded by the relevant Department or Departments from the Funds; or

### require the Recipient to use, deal with or transfer any Asset as the Departments direct in writing.

### If any Asset is lost, damaged or destroyed, the Recipient must reinstate or replace the Asset (including by using the proceeds of insurance) without using any of the Funds and this clause 17 continues to apply to the reinstated or replaced Asset.

# **Evaluation, audits and access**

# **Evaluation**

### Either or both of the Departments may undertake an evaluation of the Project during the term of this Funding Agreement and for a period of 2 years after the Sunset Date of this Funding Agreement, either directly or through a third-party adviser.

### The Recipient must, at its own cost, provide all reasonable assistance to the relevant Department or Departments (and any of their advisers) for such review or evaluation.

### Subject to clause 20, during the term of this Funding Agreement, the Recipient must provide, upon request by either or both of the Departments, any information reasonably required by either or both of the Departments relating to the implementation and progress of the Project in the format requested by the relevant Department(s).

# **Financial Records**

### The Recipient must, and must ensure that each Subcontractor must, keep full and accurate Records so that:

### all financial transactions, including receipts and payments, arising out of or in connection with the Funding are clearly and separately identifiable;

### if required by Law or either or both of the Departments, financial statements under the Australian Accounting Standards are able to be prepared;

### if required by Law or either or both of the Departments, the Recipient’s accounts and Records are able to be audited in accordance with Australian Auditing Standards; and

### all of the Recipient’s taxation liabilities and payments can be clearly identified.

### The Recipient must retain such Records for a minimum of 7 years after the End Date.

# **Recordkeeping**

### The Recipient must:

### maintain and manage the Records:

### in such a way that will allow the Records to maintain their accuracy and completeness, and be quickly and easily accessed, retrieved, reviewed, used and kept by either and both of the Departments, the Victorian Government and the NSW Government;

### otherwise in accordance with any directions notified by the Departments; and

### in accordance with any of the Departments policies as notified to the Recipient from time to time; and

### retain the Records for a period of 7 years after the End Date.

# **Audits and access**

### During the term of this Funding Agreement and for 7 years after the End Date of this Funding Agreement, either Department or both of the Departments or their nominees may:

### conduct audits relevant to the performance of the Recipient’s obligations under this Funding Agreement and in respect of the Project; and

### upon giving the Recipient reasonable notice, access the Recipient’s premises, require the provision of Records and information, and inspect and copy any documentation or Records reasonably necessary for that purpose.

### In addition to any other obligation under this Funding Deed, the Recipient will immediately provide access to Records:

### promptly at either or both of the Department(s) written request;

### in accordance with the requirements of all relevant Laws;

### if requested by the NSW or Victorian Auditor-General or Ombudsman in writing;

### to the Department or any third party nominated by the Department in accordance with any written request by the Department; or

### for the purposes of audit and performance monitoring under clause 18.4(a).

### The Recipient must, and ensure that each Subcontractor must, retain all relevant Records relating to the Project for at least 7 years after the End Date of this Funding Agreement.

### The Recipient must provide all reasonable assistance to the Departments and their nominee(s) (if any) for such audit or access, including by procuring any required Records from its Subcontractors.

### In carrying out an audit or accessing the Recipient’s premises, the Departments will, and will procure that any nominee will, use reasonable endeavours to minimise any disruption to the activities contemplated in this Funding Agreement caused by any audit or access, and will comply with the Recipient’s reasonable workplace and site access policies.

### Where an audit under this clause 18.4 identifies, in either Department or both of the Departments' opinion, that the Recipient is in breach of this Funding Agreement, then, without limitation to any other rights under this Funding Agreement or at Law, the relevant Department or Departments may recover from the Recipient the costs incurred in conducting that audit. The Recipient acknowledges and accepts that it is not permitted to use Funds to meet any such costs.

# **Acknowledgement, disclaimer and publicity**

### The Recipient must (and must ensure that any Subcontractor must) acknowledge the financial and other support received from the Departments:

### with prominent written acknowledgement and display of appropriate Departmental and any other logos or trademarks as notified by the Departments to the Recipient in all publications, promotional and advertising materials, the home page of any website established in connection with the Project, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result of it;

### if required by the Departments, on any equipment or facility funded wholly or in part by the Departments; and

### if required by the Departments, at the place where the Project is undertaken.

### The form of acknowledgement under clause 19(a) must:

### be as specified in item [15](#_bookmark4) of the Project Details;

### include the disclaimer specified in item 16 of the Project Details; or

### be as otherwise approved by the Departments (after having received at least 10 Business Days’ notice) prior to its use.

### Subject to clause 19(h)(2), the Recipient agrees that it will:

### cooperate with the Departments in relation to all publicity associated with the Funds and the Project; and

### provide any assistance required by either or both of the Departments in the preparation of materials used to promote the benefits of the Hydrogen Hub Initiative to the industry, such as a media releases or case studies on the Project.

### The Recipient consents to the Departments jointly and/or separately publicising and reporting on the Project, including (without limitation) by way of an annual report, outlining the:

### Project and the Outcomes;

### benefits accruing to both the Recipient and the State of NSW and State of Victoria as a result of the provision of the Funds, including without limitation, by reference to key performance indicators; and

### an evaluation of the effectiveness of the Project; and

### awarding of the Funds, the Total Funds available and any Funds available and/or paid under this Funding Agreement.

### The Recipient consents to, and will ensure that each Subcontractor consents to, any publication or report released by either or both of the Departments including, at a minimum any or all of the following:

### the name of the Recipient;

### the Recipient’s shareholders;

### the Key Project Subcontractors;

### the amount of the Funds available and/or paid under this Funding Agreement; and

### a description of the Project and Outcomes.

### The Recipient agrees and acknowledges that in accordance with:

### NSW Government or Victorian Government state policy, either Department, the State of NSW or the State of Victoria may publish and make available to the public the terms and conditions of this Funding Agreement in any medium (including the internet), other than any terms or conditions which the parties agree to keep confidential; and

### NSW Law, in particular part 6A of the *Energy and Utilities Administration Act* 1987 (NSW) and without limitation to clause 20(f), the Recipient consents to NSW disclosing, publishing and/or making available (publicly or otherwise) any information arising out of or in connection with this Funding Agreement or Project that is required to comply with that NSW Law.

### Unless otherwise agreed by the Departments, the Recipient must procure, and provide to the Departments as soon as practicable, artists’ impressions or renders which demonstrate the anticipated appearance of any works constructed or goods developed in connection with the Project upon completion.

### The Recipient must and must ensure that any Subcontractor must:

### include a disclaimer as specified in item [16](#_bookmark5) of the Project Details or otherwise approved or requested by the Departments in all published material relating to the Project; and

### before making a public announcement in connection with this Funding Agreement or any transaction contemplated by it, obtain the Departments’ written prior consent to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange), in which case the Departments should be notified of any such requirement as soon as practicable.

# **Confidentiality**

### The Departments must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person unless the disclosure is in accordance with this Funding Agreement.

### Notwithstanding any other provision of this Funding Agreement, the Recipient consents to the Departments disclosing Recipient Confidential Information and information of the type specified in clause 5.1(b)(2) ‘public restricted’:

### as specified or as contemplated in the Knowledge Sharing Plan;

### to the Departments’ Personnel or advisers, including its Knowledge Sharing Agent;

### to ARENA and/or CEFC (where the Recipient indicates in its Application that it will be applying for ARENA and/or CEFC separate funding);

### where applicable, to other lenders or financial institutions involved in the Project;

### to a house or a committee of the Parliament of New South Wales and/or Parliament of Victoria and/or the Parliament of Australia, or any of the Commonwealth or State or Territory Auditor General or Ombudsmen;

### to either Department’s responsible Minister or to any Victorian Government, NSW Government or Australian Government agency; and

### to AEMO;

### to the relevant network service provider (as that term is defined in the NER);

### where required by Law; or

### otherwise with the Recipients prior written consent

### The Recipient must not, without the prior written consent of the Departments (which may be given in their absolute discretion with or without conditions), disclose any Department Confidential Information or information provided by the Recipient under clause 5.1(b)(2) to another person.

### Without limiting any other provision of this Funding Agreement, where the Recipient pursuant to clause 20(c) has the prior written approval to disclose:

### the Department Confidential Information; or

### information of the type specified in clause 5.1(b)(2) ‘public restricted’ to a third party,

### the Recipient must:

### give notice to the receiving party in writing that the information is Confidential Information; and

### only provide the Confidential Information if the receiving party agrees to keep the information confidential as if it were bound by the obligations of confidentiality imposed under this Funding Agreement.

### The Recipient acknowledges and consents to the Recipient Confidential Information being provided by either or both of the Departments to a contractor for data handling and analysis services or incorporated into databases or other IT systems and aggregated into documents or other media for public release, provided that arrangements are in place to maintain confidentiality of Recipient Confidential Information and meet any conditions in the Knowledge Sharing Plan.

### With respect to any information, reports, Licensed Materials and/or data obtained in connection with this Project (**Project Information**), and subject to the compliance by the Departments of the requirements set out in clause 20(a), 20(b) and any obligations in the Knowledge Sharing Plan, the Recipient:

### agrees to comply with and contribute to the requests for the provision of Project Information by either or both of the Departments, including without limitation, for the purposes of research, investigations, program monitoring and surveys conducted by, or on behalf of, either or both of the Departments;

### gives its consent to the Departments (jointly and separately) to disclose, publicly or otherwise, the Project Information;

### agrees to:

### use all reasonable efforts to obtain the written consent of third parties to whom the Project Information relates to disclose, publicly or otherwise, the Project Data; or

### otherwise provide written confirmation of the applicable Project Information that does not have the consent of the third party to whom the Project Information relates for the Departments to disclose, publicly or otherwise, the Project Information shared; and

### provide to the Departments evidence of either 20(f)(3)(A) or 20(f)(3)(B) above; and

### acknowledges that the:

### Departments may require the consents of third parties given under this clause to be in a certain form or meet certain requirements, which will be notified to the Recipient from time to time; and

### consents provided under this clause 20(f) are given to satisfy, without limitation to any other requirements under Law or this Funding Agreement, the requirements of section 41 of the *Energy and Utilities Administration Act 1987* (NSW).

### Despite clause 20(f), the Recipient is not required to comply with a request to provide or disclose Program Information under clause 5.2(a) or 20(f)(1) to the extent affected by 20(g)(1)(A) or 20(g)(1)(B) below, if the Recipient notifies the Departments in writing that:

### compliance with the request would result in the Recipient breaching:

### a duty of confidentiality owed by the Recipient to any third party which cannot be mitigated or otherwise redacted in the relevant Project Information; or

### any Privacy Laws with respect to any third party; or

### the Recipient has used all reasonable endeavours to obtain the relevant third party’s consent to the provision and disclosure of the information the subject of the relevant request and that relevant third party has confirmed that it will not provide such consent.

# **Force Majeure**

# **Force Majeure Event defined**

In this Funding Agreement, a **Force Majeure Event** means any event or circumstance or combination of events or circumstances occurring after the Commencement Date:

### that is not within the reasonable control, contemplation or foresight of the Recipient;

### the occurrence or effect of which the Recipient could not have avoided through compliance with its obligations under this Funding Agreement and the exercise of reasonable care and conducting its activities in accordance with Good Electricity Industry Practice or Good Industry Practice; and

### that causes or results in the prevention or delay of the Recipient from performing its obligations under this Funding Agreement,

including arising out of, to the extent they satisfy clauses 21.1(a) to 21.1(c):

### an act of God, including floods and fire but excluding inclement weather such as prolonged periods of precipitation;

### a Coronavirus Event;

### war, hostilities, invasion, kidnapping, act of foreign enemies, military mobilisation or embargo;

### acts or threats of terrorism;

### rebellion, revolution or insurrection; or

### riot, vandalism or sabotage.

# **Exclusions**

Notwithstanding clause 21.1, the following will not constitute a Force Majeure Event:

### lack of funds, financial hardship or the inability of the Recipient, its Related Parties or any of its Related Bodies Corporate to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this Funding Agreement;

### the inability of the Recipient, its Related Parties or any of its Related Bodies Corporate to obtain financing or insurance, either completely or on commercially acceptable terms;

### a shortage of materials, consumables, equipment or utilities required by the Recipient, except to the extent it is itself caused directly and wholly by a Force Majeure Event;

### a breakdown or failure of the Recipient’s equipment, property or an asset (including any Assets) caused by normal wear and tear;

### any event or circumstance arising due to a failure by the Recipient, its Related Parties, its Related Bodies Corporate, or their respective employees, agents or contractors to properly maintain any equipment, property or an asset or to hold sufficient stock of spares, except to the extent it is itself caused by a Force Majeure Event;

### strikes, industrial disturbances or other industrial action other than on a national or state-wide basis;

### the failure of any person (other than either or both of the Departments) to perform an obligation it owes to the Recipient, except to the extent such failure is caused by any event or circumstance that, had it happened to the Recipient, would have been a Force Majeure Event under this Funding Agreement; or

### failure or inability of any person to pay any sum due and payable.

# **Non-performance excused**

### Subject at all times to clauses 21.3(b) and 21.4, non-performance (wholly or in part) as a result of a Force Majeure Event by Recipient of any obligation required by this Funding Agreement to be performed will, other than as explicitly set out in this Funding Agreement:

### be excused during the time and to the extent that the Force Majeure Event prevents such performance, wholly or in part; and

### not give rise to any liability to the Departments, both jointly and severally, including any liability of any kind arising out of, or in any way connected with, that non-performance.

### Nothing in this clause 21.3 will affect any Milestone Long Stop Date or any right the Departments may have both jointly and severally under this Funding Agreement.

### The Recipient is responsible for all costs associated with the Force Majeure Event, unless otherwise agreed with the Departments.

# **Notification and diligence**

The benefit of clause 21.3 is conditional on the Recipient complying with all of the following at all applicable times:

### notifying the Departments as soon as reasonably possible:

### of the full particulars of the Force Majeure Event;

### the date of commencement and expected duration of the Force Majeure Event; and

### providing an estimate of the period of time required to enable it to resume full performance of its obligations;

### keeping the Departments informed of any material changes or developments to any of the matters referred to in clause 21.4(a);

### using all reasonable diligence and means consistent with Good Electricity Industry Practice and Good Industry Practice to remedy or abate the Force Majeure Event as expeditiously as possible;

### resuming performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent that permits resumption of performance (in whole or in part); and

### notifying the Departments when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance (in whole or in part) to occur.

# **Termination for prolonged Force Majeure Event**

If non-performance by the Recipient due to the Force Majeure Event continues for a period of more than 270 consecutive days, or 270 days in aggregate in any 12-month period, the Departments may terminate this Funding Agreement immediately by giving the Recipient written notice.

# **Suspension and Reduction in Scope and Payment**

# **Reduction in scope of agreement for fault**

### Without limitation to any other right the Departments have (jointly or severally), if the Recipient does not comply with an obligation under this Funding Agreement and the Departments determine (acting reasonably) that the non-compliance is:

### incapable of remedy; or

### is capable of remedy but the Recipient has failed to comply with a:

### notice to remedy provided by the Departments; or

### Cure Plan approved by the Departments,

then Department may without limitation to any other rights they may have, by written notice and in their discretion, either:

### reduce the scope of this Funding Agreement on and from the date of the written notice (**Notice of Reduction**); or

### terminate this Funding Agreement pursuant to clause 23.

### If a notice to remedy is provided by the Departments under clause 22.1(a)(2)(A), then the Recipient must within 5 Business Days’ of that notice to remedy, provide the Departments with a proposed plan to cure the non-compliance for approval by the Departments (**Cure Plan**).

### Within 10 Business Days’ of receipt of the Cure Plan, the Departments may reject, accept or seek amendments to the Cure Plan. If the Departments:

### reject the Cure Plan, then the relevant non-compliance will be deemed incapable of remedy and under clause 22.1(a)(1);

### accept the Cure Plan, then the Recipient must implement the Cure Plan in accordance with its terms; or

### seek amendments to the Cure Plan, then the Recipient must provide further amendments for approval (**Amended Cure Plan**) and the timeframes and obligations under clause 22.1(b) and this clause 22.1(c) apply as if the Amended Cure Plan was the original Cure Plan.

### Without limitation to any other rights the Departments have (jointly and severally), the Departments may in their sole discretion, suspend the provision of all Funds until such time that the Departments (acting reasonably and expeditiously) determine that the non-compliance has been remedied in accordance with the terms of the Cure Plan.

### The Recipient agrees, on receipt of the Notice of Reduction to:

### stop or reduce the performance of the Recipient’s obligations as specified in the Notice of Reduction;

### take all available steps to minimise loss resulting from the reduction in scope;

### continue performing any part of the Activities, Outcomes, Milestones and this Funding Agreement not affected by the Notice of Reduction if requested to do so by the Departments; and

### report on and return any part of the Funds paid by the Departments arising out of or in connection with the Notice of Reduction (as reasonably determined by the Departments), or otherwise deal with the Funds, as directed by the Department.

### In the event of a Notice of Reduction, the amount of the Total Funds and/or Funds payable by the Departments will be reduced in proportion to the reduction in the scope of this Funding Agreement as determined by the Departments acting reasonably.

# **Suspension or Reduction for Change in Policy**

### Subject to clause 23.2 and without limiting any other rights the Departments have (jointly or severally), if there has been a Change in Policy with respect to this Funding Agreement or the Project, then the Departments may by notice to the Recipient, reduce the scope of this Funding Agreement or Project, without further obligation or liability, effective from the date specified in the notice.

### On the date specified in the notice under clause 22.2(a), the Total Funds and Funds payable by the Departments will be reduced in proportion to the reduction in scope of the Funding Agreement or Project as reasonably determined by the Departments.

### The Recipient must continue to undertake any part of this Funding Agreement and Project not affected by the notice.

# **Suspension during Force Majeure Event**

If a Force Majeure Event has been subsisting for more than 30 consecutive days, or 30 days in aggregate in any 12-month period, the Departments may, by written notice to the Recipient, immediately suspend the Departments’ obligations to provide any Funds under this Funding Agreement pending resolution of the Force Majeure Event.

# **Termination**

# **Termination Events**

### Without limiting any other rights or remedies the Departments may have, both jointly and severally, the Departments may terminate this Funding Agreement without further obligation or liability by providing the Recipient with not less than 5 Business Days’ prior written notice, effective from the time specified in the notice, if any of the following **Termination Events** occur:

### the Recipient does not comply with an obligation under this Funding Agreement and the Departments believe that the non-compliance is:

### incapable of remedy; or

### capable of remedy but the Recipient has failed to comply with a:

### notice to remedy provided by the Departments; or

### Cure Plan approved by the Departments;

### the Recipient Abandons the Project at any time prior to the Sunset Date;

### the Recipient has failed to achieve the requirements of the Operating Procedures (or part thereof), but for clarity, has otherwise complied with clause 4;

### the Recipient has not achieved a Milestone by the applicable Milestone Long Stop Date;

### the Recipient has wilfully, fraudulently, unlawfully or recklessly:

* + - * 1. breached this Funding Agreement; or
        2. made any materially false or misleading statements to either or both of the Departments as part of its Application or throughout the term of this Funding Agreement; or

### the Recipient becomes subject to an Insolvency Event.

### The Recipient agrees, on and from the date of termination the Recipient must:

### cooperate with the Departments to facilitate the orderly cessation of the Project;

### take all available steps to minimise loss resulting from the termination;

### provide any required reports to either or both Departments; and

### repay the Funds to the Departments if, and to the extent, it is required under clause 24.

# **Termination for Change in Policy**

Without limiting any other rights or remedies the Departments may have both jointly and severally, if there has been a Change in Policy the Departments may, by providing not less than 30 days’ prior written notice to the Recipient, terminate this Funding Agreement without further obligation or liability effective from the time specified in the notice, in which case:

### the parties will work cooperatively to facilitate the orderly cessation of the Project; and

### the Recipient will be entitled to payment in accordance with clause 23.3(b) but will not be entitled to any other claim or any other amount from either and both of the Departments.

# **Rights and entitlements upon termination**

### If this Funding Agreement is terminated under this clause 23:

### the Departments, both jointly are severally, are not obliged to pay to the Recipient any compensation, or any outstanding amount of funding under this Funding Agreement;

### without limiting any other rights and remedies they may have both jointly and severally, the Departments are immediately entitled to recover any Undisbursed Funds and other moneys remaining in the Bank Account or Segregated Bank Account at the time of termination; and

### the Recipient must repay to the Departments any amounts demanded by the Departments under clause 24.

### If this Funding Agreement is terminated under clause [21](#_bookmark83) (‘Force Majeure’) or clause [23.2](#_bookmark126) (‘Termination for Change in Policy’), the Departments are liable to the Recipient (jointly and severally) only for payments due by each Department under clause 6.1(a) before the effective date of termination in accordance with this Funding Agreement, but only to the extent that those monies have been spent or Legally Committed on Eligible Expenditure.

### Termination of this Funding Agreement does not affect any accrued rights or remedies of a party.

### The Recipient agrees, on receipt of the notice of termination under this clause [23,](#_bookmark109) to:

### take all available steps to minimise loss resulting from the termination; and

### report on and, subject to the completion of any Dispute arising out of the termination, return any part of the Funds to the Departments, or otherwise deal with the Funds, as directed by the Departments.

# **Survival**

Clauses 2 (Definitions), 5 (Knowledge sharing), 6 (Funds), 8.3 (Withdrawal of funds from the Bank Account or Segregated Bank Account), 9 (Contributions), 11 (Reporting and plans), 13.1(f) (Warranties), 13.1(j) (Warranties), 13.2(i) (Trustee warranties), 14 (Liability and indemnity), 15 (Undertakings and acknowledgements), 18 (Evaluation, audits and access), 19 (Acknowledgement, disclaimer and publicity), 20 (Confidentiality), 23.3 (Rights and entitlements upon termination), 23.4 (Survival), 24 (Repayment of the Funds), 25 (Dispute resolution), 26 (GST), 27 (Notices and other communications), 28 (Subcontracting), 29.1 (Modern Slavery), 29.2 (Security of Critical Infrastructure), 29.5 (Costs and duty), 29.7 (Entire agreement), 29.9 (Severability), 29.10 (Exercise of rights and waiver), 29.11 (No partnership), 29.12 (Consequential Loss), 29.13 (Indemnities), 29.14 (Governing law) and 29.15 (Electronic execution) survive the expiry or termination of this Funding Agreement, together with any provision of this Funding Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Funding Agreement.

# **Repayment of the Funds**

# **Circumstances giving rise to repayment**

Notwithstanding anything else in this Funding Agreement other than clause 24.2(c), the Departments may, in their absolute discretion, either jointly or severally, require the Recipient to repay some or all of the Funds paid by the relevant Department(s) in the circumstances and to the extent specified below:

### (**misspent funds**): the amount of any Funds which, in either or both of the Department’s opinion (acting reasonably) and at any time, has been spent or used other than in accordance with this Funding Agreement;

### (**unspent funds**):

### the full amount of any the Funds which have been paid to the Recipient but has not been spent or Legally Committed by the Recipient as at the End Date; and

### any Funds in excess of an amount equal to 10% of the previous Milestone payment (if any), which has been paid to the Recipient and not been spent or Legally Committed by the Recipient as at a due date for payment of further Funds in accordance with this Funding Agreement;

### (**wilful breach**): an amount equal to all the Funds paid to the Recipient if the Recipient has wilfully, fraudulently, unlawfully or recklessly breached this Funding Agreement under clause 23.1(a)(5);

### (**breach**): if this Funding Agreement is terminated pursuant to clauses 23.1(a)(1) or 23.1(a)(4) an amount equal to all the Funds paid to the Recipient by the Departments under this Funding Agreement;

### (**material change to Project costs**): an amount equal to any Refund Amount calculated in accordance with Schedule 5;

### (**Recipient Contributions and Other Contributions not used**): if, as at the End Date, Recipient Contributions or Other Contributions have not been used for the Project, an amount that represents the same proportion of the Funds as the Unused Portion;

### (**Insolvency Event**): an amount equal to all the Funds paid to the Recipient if an Insolvency Event occurs in respect of the Recipient and the Departments have terminated this Funding Agreement in accordance with clause 23.1(a)(6);

### (**transfer of Assets**): at any time, an amount equal to all the Funds provided under this Funding Agreement if the Departments terminate this Funding Agreement under clause 23.1(a) for a breach of clause 17;

### (**Operating Parameters**): if the Departments terminate this Funding Agreement pursuant to clause 23.1(a)(3), an amount equal to all the Funds which have been paid to the Recipient by the Departments under this Funding Agreement;

### (**Change in Control or transfer**): an amount equal to all the Funds paid to the Recipient if the Departments terminate this Funding Agreement because the Recipient is in breach of clause 23.1(a)(1) for a breach of clause 16; and

### (**Abandoned Project**): an amount equal to all the Funds paid to the Recipient if the Recipient Abandons the Project and does not resume performance within 10 Business Days’ after the Department gives the Recipient notice requiring it to do so, unless the Recipient provides reasonable evidence (within that timeframe), to the Department’s satisfaction (acting reasonably), that there are reasonable technical grounds for abandoning the Project; or

### (**FIRB rejection or withdrawal**): an amount equal to all the Funds paid to the Recipient under this Funding Agreement for any action that is required for the development or construction of the Project that requires FIRB Approval (including for the acquisition of interests in land, acquisition of shares or the provision of equity or debt funding for the Project) and the required FIRB Approval:

### for such action is applied for and either approval is denied or the applicant withdraws its Application without re-submission; or

### is not obtained in circumstances where failure to do so comprises a breach of the *Foreign Acquisitions and Takeovers Act 1975* (Cth),

and such matters cause or materially contribute to the Abandonment of the Project or termination of this Funding Agreement.

# **Repayment notice**

### Either or both of the Departments may give the Recipient a repayment notice requiring the Recipient to repay to the relevant Department(s) an amount which the relevant Department(s) are entitled to recover under clause 24.1. If the relevant Department(s) give the Recipient such notice, the Recipient must, within 20 Business Days’ of the date of the repayment notice, repay the amount (including interest calculated as set out in clause 24.3) specified in the repayment notice.

### Either or both of the Departments may (in their absolute discretion) elect to require repayment of a lesser amount of the Funds than otherwise required under clause 24.1.

### Where the right to require repayment arises under clause 24.1(e), both Departments will act reasonably when exercising their rights, having regard to the impact such repayment would have on the overall viability of the Project.

### **Interest on amounts to be repaid**

Unless otherwise stated by either or both of the Departments, the Recipient must pay interest in connection with any amount notified as owing by the relevant Department(s) under clause 24.1 or where otherwise indicated in this Funding Agreement. The rate of interest will be calculated:

### on the amount to be repaid to the relevant Department(s) as set out in the repayment notice or other notice as otherwise specified under this Funding Agreement;

### at the Interest Rate plus 3%;

### on a semi-annually compounding basis upon the principal amount specified in the notice as repayable; and

### from and including the date the amount is payable up to but excluding the day on which the Recipient repays the total amount specified in the notice as owing to the relevant Department(s), without any set off, counter-claim, condition, abatement, deduction or withholding.

# **Acknowledgement and limitations**

### The Recipient acknowledges that the amounts to be paid to either or both of the Departments under this clause 24 are a genuine pre-estimate of the losses incurred by the relevant Department(s) for the defaults described in this clause 24.

### The parties agree that the amount of any repayments payable to the relevant Department(s) by the Recipient under this clause 24 must not exceed the amount of the Funds paid to the Recipient by the relevant Department(s).

### The Recipient acknowledges that any repayment claim made by either or both of the Departments under this clause 24 will be a debt due and owing by the Recipient to the Departments jointly and severally.

### This clause 24 does not limit any other rights or remedies of the Departments, both jointly and severally.

# **Dispute resolution**

### Any party must comply with this clause 25 in relation to any Dispute before starting court proceedings, except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 25.

### Any party claiming a Dispute has arisen must give the other parties to the Dispute a Notice of Dispute.

### Within 10 Business Days’ after a Notice of Dispute is received (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use all reasonable endeavours to resolve the Dispute through a meeting of their senior officers who have the authority to bind their respective parties.

### Any Dispute which remains unresolved 20 Business Days’ after the meeting under clause 25(c) (unless such period is extended by agreement of the parties) must be referred to arbitration for resolution in accordance with the ACICA Arbitration Rules. The seat of arbitration will be Sydney, Australia. The language of the arbitration must be English. The number of arbitrators will be three.

### Each party retains the right to apply to any court of competent jurisdiction (subject to clause 29.14) for provisional, interim and/or conservatory relief, including injunctions, and any such request will not be deemed incompatible with the obligation to arbitrate under this Funding Agreement or a waiver of the obligation or right to arbitrate.

### Notwithstanding clause 25(e) ,where a Dispute relates solely to:

### the determination or calculation of a financial amount;

### whether a Milestone has been achieved for purposes of clause 6.3; or

### amounts to be determined by an Expert under Schedule 5,

the Dispute will be referred to an Expert appointed by the Recipient and approved by the Departments, in each case acting reasonably. The costs of the Expert will be borne by the Recipient.

### If an Expert has not been appointed within 45 days after the meeting under clause 25(c) (unless such period is extended by agreement of the parties) or either or both of the Departments do not agree with the Expert's determination of Disputes referred to the Expert in accordance with clause 25(f), the Dispute may be referred by either party to arbitration under clause 25(d).

# **GST**

### In this clause 26:

### unless otherwise stated, words and expressions which are not defined in this Funding Agreement, but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

### a reference to a party or an entity includes the representative member of any GST group of which the relevant party or entity is a member.

### Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided to either or both of the Departments under this Funding Agreement are exclusive of GST.

### Subject to this clause 26, if a party (**Supplier**) makes a taxable supply to another party (**GST Recipient**) under or in connection with this Funding Agreement in respect of which GST is payable, the GST Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount is payable at the same time that any part of the consideration for the supply is first paid or provided, subject to the Supplier providing a tax invoice to the GST Recipient.

### If an adjustment event arises in respect of a taxable supply made by the Supplier under this Funding Agreement, the amount payable by the GST Recipient will be recalculated to reflect the adjustment event and a payment will be made by the GST Recipient to the Supplier or by the Supplier to the GST Recipient as the case requires. The Supplier must provide an adjustment note to the GST Recipient in accordance with the GST Law.

### If the GST payable in relation to a supply is less than the amount the GST Recipient has paid the Supplier under clause 26(c), the Supplier is only obligated to pay a refund of GST to the GST Recipient to the extent the Supplier receives a refund of that GST from the relevant Authority.

### If a payment to a party under this Funding Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which that loss, cost or expense relates.

# **Notices and other communications**

### Any notice, approval, consent or other communication must be in writing, in English and from a person duly authorised by the party.

### In addition to clause 27(a), if a notice, approval, consent or communication is sent by the Recipient then the Recipient must:

### send an identical notice simultaneously to both The NSW Treasury and DELWP at the addresses specified in item 19; or

### if notified by the Departments at any time, to the Contract Management Agent.

### In addition to clause 27(a), if any notice, approval, consent or communication is to be provided by the Departments jointly under this Funding Agreement, then unless otherwise notified by the Departments:

### that notice, approval, consent or other communication must be given by each Department to the Recipient in accordance with this clause; and

### notice will be taken to be received on the date that both Departments have provided that notice, approval, consent or other communication pursuant to clause 27(f).

### In addition to clause 27(a), if any notice, approval, consent or communication is to be or may be provided by one Department under this Funding Agreement, the notice will be taken to be received in pursuant to and in accordance with this clause 27.

### The Departments may, at any time, notify the Recipient that the Contract Management Agent will be responsible for the Departments notice obligations (both jointly and separately) under this Funding Agreement.

### Any notice, approval, consent or other communication takes effect when it is taken to be received and is taken to be received:

### if sent by express post, on the Business Day after the date it was mailed if mailed before 5.00pm or otherwise on the second Business Day after it was mailed; or

### if sent by email, on the day and at the time it is sent (as recorded on the sender’s equipment), unless the sender receives an automated message that the email has not been delivered, or the intended recipient of the notice notifies the sender within 1 Business Day that the email has not been delivered, but if the delivery or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day in the receiver’s locality.

# **Subcontracting**

# **Subcontracting**

### The Recipient must provide the Departments with a Subcontractor Notice at least 15 Business Days’ prior to entering the relevant subcontract (**Subcontractor Notice Period**) outlining the business details of the proposed Subcontractor. The Subcontractor Notice must include, at a minimum:

### the proposed subcontractor's business name;

### the proposed subcontractor's ABN; and

### an up-to-date ASIC company search of the subcontractor (if the subcontractor is a registered ASIC entity).

### Within the Subcontractor Notice Period the:

### Recipient must promptly provide any other information reasonably requested by the Departments;

### Departments will confirm whether the proposed subcontractor is a Key Project Subcontractor if not already captured by the definition of a Key Project Subcontractor; and

### Recipient must follow any reasonable directions of the Departments with respect to the proposed Subcontractor.

### If the subcontractor is not a Key Project Subcontractor by definition and the Departments do not confirm whether the proposed subcontractor is a Key Project Subcontractor within the Subcontractor Notice Period, then at the end of the Subcontractor Notice Period it is deemed that the proposed subcontractor is not a Key Project Subcontractor.

### Without limitation to clause 28.1(b), the Departments may provide written notice to the Recipient at any time advising that a subcontract is either:

### a Key Project Subcontractor; or

### not a Key Project Subcontractor.

### Any obligations associated with either of the characterisations above commence on the date that the Recipient is notified of the relevant characterisation.

### Without limitation to any other conditions that may be required by the Recipient in order to comply with this Funding Agreement, the Recipient must ensure that in all of its subcontracts:

### there is a right for the Recipient to terminate that subcontract at any time if required under this Funding Agreement; and

### must expressly exclude all liability of the Departments (jointly and severally), including without limitation, for termination required by the Departments.

# **Key Project Subcontractors**

### With respect to Key Project Subcontractors, the Recipient must, and must ensure that the relevant subcontract provisions for, the prior written notice to the Departments if:

### there is a Change of Control of a Key Project Subcontractor;

### the Key Project Subcontractor suffers an Insolvency Event;

### there is an assignment, transfer or novation of the subcontract with the Key Project Subcontractor; or

### there is a material change to the subcontract or scope between the Recipient and the Key Project Subcontractor

# **Department request to terminate Subcontract**

### At any time the Departments may in their absolute discretion, on 15 Business Days' notice, request that the Recipient terminate a Key Project Subcontractor subcontract.

### The Recipient must promptly execute the termination of the Key Project Subcontractor subcontract under clause 28.3 and provide confirmation to the Departments once the termination has been effected.

### Any termination under this clause is without liability to the Departments (jointly and separately). The Recipient is responsible for any liability arising out of or in connection with the termination of a subcontract.

# **Recipient Liabilities**

### The Recipient is fully responsible for and indemnifies Those Indemnified against any claim, loss, damage, cost, expense or liability (including legal costs on a solicitor and own client basis) arising out of or as a consequence of the:

### Subcontractor undertaking any element, aspect or other activity with respect to the Project (whether or not it has been permitted under the subcontract with between the Recipient and the Subcontractor);

### Subcontractor’s performance of any or all of its obligations; and

### Subcontractors’ acts and omissions, as if it were the Recipient’s acts and omissions.

### The subcontracting of any aspect of the Project does not diminish or otherwise reduce the liability of the Recipient under this Funding Agreement. The Recipient remains fully responsible for undertaking the Project and the performance of all its obligations under this Funding Agreement.

### The:

### provision of and response to the Subcontractor Notice;

### exercise or non-exercise by the Departments of their rights (jointly and separately); and

### subcontracting and continued subcontracting by the Recipient;

### under or in connection with this Funding Agreement:

### does not constitute constructive notice of circumstances or a breach, any waiver, approval or consent by the Departments with respect to any obligations the Recipient may have under or in connection with this Funding Agreement or at Law; and

### is without limitation to, and does not constitute a waiver of, any other right the Departments have (jointly and separately) under this Funding Agreement or at Law.

# **Miscellaneous**

# **Modern Slavery**

### The Recipient acknowledges that it is not aware of any Modern Slavery in its supply chain.

### Should the Recipient become aware of any:

### Modern Slavery risks in its supply chain or operations, it must notify the Departments of those risks and advise the Departments of the steps it is taking to eliminate or minimise those risks; or

### Modern Slavery practices being carried out within its operations or supply chain, it must:

### in writing, immediately notify the Departments of those practices and of the remediation action it proposes to take; and

### at its cost, take any such additional remediation action required by the Departments (acting reasonably and after due consultation with the Departments).

### If the Recipient is a ‘reporting entity’ for the purposes of Modern Slavery Laws, it must comply with such legislation and provide the Departments with a copy of any report it is required to prepare under that legislation at the Departments’ request.

### Within 30 days of a request by either or both of the Departments, the Recipient agrees to provide the relevant Department(s) any information and other assistance requested to the relevant Department(s) to meet any of their obligations with respect to any Modern Slavery Laws.

### The Recipient must cooperate, and procure that any of its Subcontractors cooperates, in any Modern Slavery audit undertaken by either or both of the Departments (including by a third party on behalf of any of the above listed in (a)-(d)) and providing reasonable access to the auditors to the Recipient’s premises interview any staff or personnel).

### The Recipient consents to either or both of the Department(s) sharing information obtained from the Recipient with respect to Modern Slavery, including any Records, with any other NSW Government agency or entity if requested by The NSW Treasury, or any other Victorian Government agency or entity if requested by DELWP:

### for the purpose of identifying or addressing that actual or potential Modern Slavery; or

### to the extent the Recipient has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Recipient or any entity that it owns or controls.

### Without limiting any other provision of this clause, the Recipient:

### agrees that the communication of such information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and

### releases and indemnifies Those Indemnified, from and against any claim in respect of any matter assisting out of such communications, including the use of such information by either or both Departments.

# **Security of Critical Infrastructure**

### The Recipient:

### acknowledges that The NSW Treasury and/or DELWP may be subject to reporting and disclosure requirements under CI Act; and

### agrees and consents to The NSW Treasury and/or DELWP making such disclosure and reporting in respect of any data, security breach or this Project more generally as required under the CI Act.

### The Recipient must do all things necessary to assist The NSW Treasury or DELWP to comply with the CI Act.

### If the Recipient is subject to the CI Act:

### it must comply with the requirements of the CI Act; and

### notify the Departments of any actions taken in compliance with the CI Act with respect to this Funding Agreement or Project for the term of this Funding Agreement.

# **Contract Management Agent(s)**

# The Departments may appoint from time to time a Contract Management Agent(s) to perform contract management activities on their joint or several behalf including (but not limited to):

### providing or withholding any consent required to be obtained from one or both of the Departments under this Funding Agreement;

### exercising any decision-making authority or discretion given to one or both of the Departments under this Funding Agreement;

### receiving any notice, updates or other communication on behalf of one or both of the Departments that the Recipient must give under this Funding Agreement; or

### giving any notice, direction or instruction on behalf of one or both of the Departments required under this Funding Agreement,

### in which case the Departments will notify the Recipient in writing of the appointment. References to a Contract Management Agent in this Funding Agreement will be disregarded unless and until the Departments appoint the Contract Management Agent(s) in accordance with this clause 29.3[.](#_bookmark147)

# **Knowledge Sharing Agent**

### The Departments may appoint from time to time a Knowledge Sharing Agent to perform knowledge sharing activities including (but not limited to):

### collecting, storing, analysing, presenting and reporting on the data generated from the Project;

### providing detailed disaggregated information to either or both of the Departments; and

### providing identified aggregated analysis suitable for public release,

in which case the Departments will notify the Recipient in writing of the appointment. References to a Knowledge Sharing Agent in this Funding Agreement will be disregarded unless and until the Departments appoint a Knowledge Sharing Agent in accordance with this clause 29.4[.](#_bookmark148)

# **Costs and duty**

### Each party must pay its own costs of negotiating, preparing, executing and varying this Funding Agreement.

### The Recipient must pay any taxes and duties payable in respect of this Funding Agreement and the Project.

# **Counterparts**

This Funding Agreement may be executed in counterparts. All executed counterparts constitute one document.

# **Entire agreement**

This Funding Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

# **Parties must give effect to transaction**

Each party must do, at its own cost, everything reasonably necessary (including executing documents) to give full effect to this Funding Agreement and any transaction contemplated by it.

# **Severability**

A term, or part of a term, of this Funding Agreement that is illegal or unenforceable may be severed from this Funding Agreement and the remaining terms, or parts of the terms, of this Funding Agreement continue in force.

# **Exercise of rights and waiver**

### Except where this Funding Agreement expressly states otherwise, a party may, in its absolute discretion, give conditionally or unconditionally, or withhold, any acceptance, agreement, approval or consent under this Funding Agreement.

### Waiver of any provision of or right under this Funding Agreement must be in writing and signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.

# **No partnership**

This Funding Agreement does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

# **Consequential Loss**

No party will be liable to the other party for Consequential Loss arising under or in connection with this Funding Agreement.

# **Indemnities**

### Each indemnity in this Funding Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion and expiry of this Funding Agreement.

### It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Funding Agreement.

# **Governing law**

This Funding Agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

# **Electronic execution**

Subject to applicable Laws, the parties may execute this Funding Agreement and any document entered into under it, electronically (including through an electronic platform). Notwithstanding the manner in which a document under this Funding Agreement is submitted or accepted, the terms of this Funding Agreement will apply and any click-wrap, "pop-up" or other like terms and conditions of the Recipient appearing in the course of such submittal or acceptance will have no force or effect.

Schedule 1

The Project

Project

## Project

##### Description of Project

Key aspects of the **XXXX** Project are set out below:

* + 1. [insert details here]
    2. [insert details here]

|  |
| --- |
| **Name** |
| **Location** |
| **Number of Hydrogen Refuelling Stations** |
| **Location of Hydrogen Refuelling Stations** |
| **Number of Hydrogen Trucks** |

## Outcomes

The objectives for the Project will be achieved through the following Outcomes:

[*Drafting note: Insert Outcomes which the Recipient is required to achieve*.]

## Milestones

[*Drafting note*

* *The Recipient will need to achieve the relevant Milestones, to be set out below, to the satisfaction of the Departments before payment of the Funds will be released by the Departments.*
* *The below table should only set out a description of the Milestone and the timing for completion of the Milestone. Details regarding payment and quantum of the Milestone payment will be separately set out under item* [*2.2*](#_bookmark159) *further below.*
* *The satisfaction of Milestones may require the Recipient to have made actual payments.*
* *The form and substance of the Milestones should be proposed by the Recipient as a part of its Application. Applicants should note that this will be a material part of the Departments’ assessment of an Application*. *Note also that where stages are used they must be clearly identified within the below Milestones table*]

The Recipient must achieve the following Milestones to the Departments satisfaction, and provide the Milestone deliverables and Milestone Report, in a form and substance satisfactory to the Departments, by the date for completion of the relevant Milestone or such other time as agreed between the parties in writing.

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Description of Milestone and Milestone deliverables** | **Milestone Long Stop Date** | **Milestone Reviewer** |
| 1 | **Description of Milestone:**  [*Insert description of Milestone*]  **Milestone deliverables:**  [*Drafting note: Milestone* deliverables *to be inserted.]* | DD MM YYYY | [insert name here] |
| 2 | **Description of Milestone:**  [*Insert description of Milestone*]  **Milestone deliverables:**  [*Drafting note: Milestone* deliverables *to be inserted.]* | DD MM YYYY | [insert name here] |
| 3 | **Description of Milestone:**  [*Insert description of Milestone*]  **Milestone deliverables:**  [*Drafting note: Milestone deliverables to be inserted.* | DD MM YYYY | [insert name here] |
| 4 | **Description of Milestone:**  [*Insert description of Milestone*]  **Milestone deliverables:**  [*Drafting note: Milestone deliverables to be inserted.* | DD MM YYYY | [insert name here] |

Funding and Payment

## Project Funding Amounts

|  |  |
| --- | --- |
| Total Funds payable under this Funding Agreement by the Departments:  (Total Funds must not exceed $20 million) | $[●] (excluding GST) |
| Total Estimated Costs | $[●] (excluding GST) |
| Grant Funding Percentage | [●]% |

## Payment of the Funds

The Funds will be provided in Milestone payments in the following amounts:

|  |  |  |  |
| --- | --- | --- | --- |
| **Milestone no.** | **Total Amount of Milestone payment (GST exclusive)** | **Amount of Milestone Payment (GST exclusive)**  **NSW Treasury** | **Amount of Milestone Payment (GST exclusive)**  **DELWP** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **TOTAL** |  |  |  |

## Recipient Contributions

|  |  |  |
| --- | --- | --- |
| **Person** | **Contribution (GST exclusive)** | **Due date or timing** |
|  |  |  |
|  |  |  |
|  |  |  |
| **TOTAL** |  |  |

## Other Contributions (financial)

|  |  |  |
| --- | --- | --- |
| **Person** | **Contribution (GST exclusive)** | **Due date or timing** |
|  |  |  |
|  |  |  |
| **TOTAL** |  |  |

## Other Contributions (in-kind)

|  |  |  |
| --- | --- | --- |
| **Person** | **Contribution (GST exclusive)** | **Due date or timing** |
|  |  |  |
|  |  |  |
| **TOTAL** |  |  |

Reporting and Plans

## Specific Reports

[*Drafting note: Reporting requirements that are not needed will be deleted. Where possible, reporting requirements under this Funding Agreement may be aligned with corresponding requirements the Recipient may have under an agreement with ARENA. The Departments may also require additional/alternative reporting requirements*]

In this item [3.1,](#_bookmark164) the following terms have the following meaning:

* + 1. **Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia; and
    2. **Approved Auditor** is a person who is:
       1. registered as a company auditor under the Corporations Act or an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia or the Institute of Public Accountants;
       2. not a principal, member, shareholder, officer, agent, Subcontractor or employee of the Recipient; and
       3. not the Recipient’s accountant.

The Recipient must provide reports to the Departments as follows:

|  |  |  |
| --- | --- | --- |
| **Report Type** | **Date** | **Requirements** |
| Milestone Report | By the completion date of each Milestone as specified in item [1.3](#_bookmark157) of this [Schedule 1.](#_bookmark152) | Each Milestone Report must include:   1. the name of the Recipient and all Subcontractors (including clear identification of Key Project Subcontractors); 2. a contact name, telephone number and email address of the Recipient and all Subcontractors; 3. the Project title and number; 4. the Milestone and period to which the report relates; 5. a Project update, including an explanation of whether the Project is proceeding in accordance with the expected timelines and Milestone Dates. If not, the update must include an explanation of the reasons for the delay, the effect the delay will have on the Project and the action the Recipient proposes to take to address this; 6. a description and analysis of the Project, including:    * evidence that the Project has been completed, and the Milestones have been achieved;    * details of the extent to which the Project achieved the Outcomes; 7. details of completion of the Knowledge Sharing Deliverables as required under item 3.3(a) of this Schedule 1; 8. a Budget update (including cost to completion) (in a format similar to that set out in Attachment 1], including:    * a report on Eligible Expenditure (excluding GST) incurred to date against the heads of expenditure in the Budget; and    * an explanation of whether the Project is proceeding in accordance with the Budget and, if it is not, an explanation of why the Budget is not being met, the effect this will have on the Project and the action the Recipient proposes to take to address this;    * where payment of Funds will be determined based on payment in arrears and/or funds Legally Committed, reasonable evidence of those costs;    * a statement of the Funds, Recipient Contributions and Other Contributions provided and spent including an itemised account of any amounts spent in connection with any arrangements with any Related Party of the Recipient, certified by an authorised officer of the Recipient;    * the amount remaining in the Segregated bank Account referred to in clause [8.2, if applicable;](#_bookmark64)    * details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;    * a brief update on the progress of the Project (including achievements and Knowledge Sharing Deliverables) relevant to the Outcomes suitable for public dissemination; and    * any other information reasonably requested by the Departments for the purposes of evaluating the Project against the objectives set out in the Guidelines and/or the Outcomes. |
| Annual Project Report | No later than 30 Business Days after the end of each financial year | The Recipient must submit a report detailing all Project benefits delivered during that financial year, and must include, at a minimum, details of:   * + [insert project specific indicators]; and   + direct and indirect employment provided. |
| An acquittals statement certified by the Recipient’s chief financial officer (or such other person approved by the Departments) | The acquittals statement is to be provided by the Recipient within 5 Business Days’ of the following dates:   1. the End Date; or 2. any other date as required by the Departments. | The acquittals statement must certify:   1. that all the Funds, Recipient Contributions and Other Contributions were spent for the purpose of the Project in accordance with this Funding Agreement and that the Recipient has complied with this Funding Agreement; and 2. that salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations. |
| Audited financial statements prepared by an Approved Auditor in accordance with Accounting Standards in respect of the Funds, Recipient Contributions and Other Contributions | Within 5 Business Days’ after:   1. the end of each financial year 2. the End Date; or 3. a request from either or both of the Departments. | The audited financial statements must include:   1. financial statements of income and expenditure with respect to the Funds; 2. a definitive statement as to whether the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; 3. a separate declaration from the Recipient’s directors that the Recipient is solvent, a going concern and able to pay its debts as and when they fall due; and 4. detail of any of the Funds returned to the Departments by the Recipient and the reasons for such refund. |
| Final Report | Within 30 Business Days’ of the End Date. | The Final Report must include:   1. the name of the Recipient and all Subcontractors (including clear identification of Key Project Subcontractors); 2. a contact name, telephone number and email address of the Recipient and all Subcontractors 3. the Project title and number; 4. the period to which the Final Report relates; 5. a Budget update (including cost to completion) which includes:    * a report on the Eligible Expenditure incurred in the Project against the heads of expenditure in the Budget;    * an explanation of whether the Project proceeded in accordance with the Budget and, if it did not, an explanation of why the Budget did not and the effect it had on the Project and any remedial actions undertaken by the Recipient to address it; and    * other information requested by either or both of the Department’s for the purposes of the Final Report; 6. where payment of Funds will be determined based on payment in arrears and/or funds Legally Committed, reasonable evidence of those costs; 7. a statement of the Funds, Recipient Contributions and Other Contributions provided and spent certified by an authorised officer of the Recipient; 8. a description and analysis of the Project, including:    * evidence that the Project has been completed, and the Milestones have been achieved;    * details of the extent to which the Project achieved the Outcomes;    * details of any benefits realised from the Project;    * any highlights, breakthroughs or difficulties encountered as part of the project engineering, and Project more generally; and    * conclusions or recommendations (if any) arising from the Project; 9. details of completion of the Knowledge Sharing Deliverables as required under item 3.3(b) of this Schedule 1; 10. details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project; 11. statistics for employment generated by or in connection with the Project; 12. a brief overview of completion of the Project (including achievements and Knowledge Sharing Deliverables) for public dissemination; and 13. any other information reasonably requested by the Departments for the purposes of evaluating the Project against the Outcomes. |

## Specific Plans

[*Drafting note: Where a particular plan is not required for the Project then that row can be deleted in the table below. Where no plans are required for the Project this item can be deleted. The Departments may also require additional/alternative plans*]

|  |  |  |
| --- | --- | --- |
| **Plan** | **Date for Providing Plan** | **Requirements** |
| **Work Health and Safety Plan (as described below)** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

|  |  |
| --- | --- |
| Work Health and Safety Plan | For the duration of this Funding Agreement, the Recipient must develop, implement and update a plan for Work Health and Safety (Work Health and Safety Plan) for the Project which includes, without limitation, the following features:   1. identify and implement all management and supervisory structures necessary to comply with WHS Law, including safety issue identification, resolution and response procedures, safe working systems, safety training requirements, access requirements and appropriate recording, reporting, inspection and auditing control measures relating to any works carried out or procured by the Recipient in relation to the Project; and 2. identify and implement procedures to ensure that all equipment used by the Recipient or its personnel in connection with the Project is adequate and safe for the task for which it is used, adequately guarded, adequately protected, approved, regularly serviced and maintained, and free from defect. |

## Reporting on Knowledge Sharing Deliverables

* + 1. Each Milestone Report must include a description of:
       1. the Knowledge Sharing Deliverables completed during the period to which the report relates, including a list of any public reports or knowledge sharing reports;
       2. the outcomes of those Knowledge Sharing Deliverables;
       3. any data or documentation developed from the Project during the period to which the report relates; and
       4. a ‘lessons learnt’ knowledge sharing report (using the template provided by the Department) for each Knowledge Sharing Deliverable since the previous report.
    2. The Final Report must include details of:
       1. all of the Knowledge Sharing Deliverables completed as at the date of the Final Report;
       2. analysis of the effectiveness of each of the Knowledge Sharing Deliverables completed; and
       3. for any on-going Knowledge Sharing Deliverables, an update of progress in undertaking each Knowledge Sharing Deliverable.

Schedule 2

Operating Parameters

*[****Drafting note:***Operating Parameters may be included in this Funding Deed and will be determined based on the scope of the Recipient's Application. Operating Parameters may specify key project parameters or any other minimum requirements determined by the Departments based on the Project.*]*

Schedule 3

**Eligible Expenditure**

1. General principles
2. Eligible Expenditure is expenditure related directly to the undertaking of the Project in accordance with this Funding Agreement (which may include capital expenses and operational expenses), calculated as the GST inclusive amount less any GST credits the Recipient, or its representative member is entitled to claim.
3. Eligible Expenditure will not include:
   1. non-cash contributions (in-kind contributions) noted in the Budget submitted with your Application;
   2. expenditure spent or Legally Committed prior to the execution of the Funding Agreement or after the End Date for the Project, excluding Eligible Contract Expenditure as permitted and set out in item 4 below;
   3. Ineligible expenditure; and
   4. any opportunity costs.
4. Where resources are used on a Project and on unrelated activities elsewhere in the Recipient organisation, the cost of those resources must be apportioned to the Project, based on the proportion of those resources that were used by the Recipient in undertaking the Project.
5. Related Party transactions must be treated on an ‘at-cost’ basis, without mark- up, unless the Recipient can demonstrate to the satisfaction of the Departments, that the transaction has been calculated on an arm’s-length basis.
6. Eligible Expenditure must be:
   1. proven against generally accepted accounting principles; and
   2. possible to track through the Recipient’s accounting system,

to meet any financial reporting and audit requirements in the Funding Agreement or as notified by either or both of the Departments from time to time.

1. Eligible Expenditure

Eligible Expenditure permitted with respect to the Project includes the following:

1. Eligible Contract Expenditure entered into for the purposes of undertaking the activities required for the conduct of the Project as set out more fully in item 4 below, subject to the Ineligible Expenditure constraints detailed in the following item 3 below;
2. expenditure for refuelling equipment installed for the Project at the full delivered cost of the equipment GST inclusive, less any GST credits the Recipient is entitled to claim as specified in the Budget at Attachment 1 (as varied from time to time in accordance with clause 10.3);
3. expenditure on equipment used for the construction of the Project, calculated on the basis of hire or lease costs, and running costs directly related to the construction of the Project, such as rent, power, fuel and repairs and maintenance as specified in the Budget at Attachment 1 (as varied from time to time in accordance with clause 10.3);
4. expenditure for the purchase of hydrogen-powered trucks for use under the Project as specified in the Budget at Attachment 1 (as varied from time to time in accordance with clause 10.3);
5. expenditure for different truck ownership and operating models (e.g. asset acquisition and leasing agreements) under the Project as specified in the Budget at Attachment 1 (as varied from time to time in accordance with clause 10.3);
6. expenditure on activities that directly contribute to, or enable knowledge sharing, including database development, websites, applications and reports;
7. expenditure on legal, audit and accounting costs related directly to the Project;
8. expenditure related to the raising of funds for the Project, or the arrangements between the Recipient and Key Project Subcontractors, where such activities can be related directly to the Project; and
9. expenditure such as relevant licence fees or Intellectual Property purchase costs, where the Recipient needs to access specific technology to undertake the Project.
10. Ineligible expenditure

‘**Ineligible expenditure**’ includes, but is not limited to, the following:

1. activities that directly relate to NSW Government or Victorian Government planning assessment processes, such as: biodiversity studies; heritage studies; noise, air quality and traffic studies; and water, waste and hazardous material studies;
2. expenditure related to the general operations and administration of the Recipient entity that the Recipient could reasonably be expected to be undertaken in the normal course of business;
3. administrative expenses, including expenses incurred on communications, accommodation, computing facilities, travel, recruitment, printing and stationery;
4. expenditure related to the Recipient’s parallel future-proofing plans for technology such as electric vehicle fast-chargers, and infrastructure upgrades such as additional carparking or improvements to customer facilities at refuelling stations;
5. expenditure for onsite renewable hydrogen production equipment;
6. expenditure on equipment for which the Recipient has already received grant funding from a supplementary funder (e.g. expenditure on three trucks that are already receiving grant funding from a supplementary funder);
7. procurement of hydrogen-powered vehicles operating back-to-base routes around refuelling stations;
8. expenditure on activities that a local, state, territory or Commonwealth government agency has the responsibility to undertake;
9. interest on loans for new and pre-existing capital items used for the Project;
10. expenditure on the acquisition of land for the Project;
11. sales or promotional activities that do not support directly the successful completion of the Project;
12. membership fees, donations, or any other expenditure that the Departments determine does not directly support the successful completion of the Project;
13. expenditure that does not support directly the successful completion of the Project;
14. labour expenditure such as salaries and staffing expenses;
15. expenditure on routine or ongoing maintenance works; and
16. recurrent operating costs.
17. Political campaigning or advocacy activities for political parties
18. Contract expenditure
19. Eligible Contract Expenditure is the cost of any activities to support the Project performed for the Recipient by another organisation. Work to be performed on a Project must be the subject of a written contract, including a letter or purchase order, which specifies the nature of the work to be performed for the Recipient and the applicable fees, charges and other costs payable. The written contract must be executed prior to the commencement of the work undertaken under the contract.
20. It is not a requirement for the Eligible Contract Expenditure to be in place at the time of the Applicant’s Application for all items of Eligible Contract Expenditure such as purchases of major items of hardware to be incorporated in the Project. The Recipient is required to obtain documentary evidence of that Eligible Contract Expenditure to substantiate that Eligible Contract Expenditure, for example written quotes from suppliers.
21. Where the contractor and the Recipient are not at ‘arm’s-length’, objectively as a matter of fact or otherwise determined by the Departments, the amount assessed for work performed will be an amount considered to be a reasonable charge for that work and contain no unacceptable overheads and no element of ‘in group profit’. Organisations considered not at ‘arm’s-length’ include related companies and companies with common directors or shareholders.
22. Accounting systems
23. In addition to any other the obligations specified in this Funding Agreement relating to accounting systems and audits, the Recipient is required to have in place suitable accounting systems to provide to either or both of the Departments assurances that the accounting system used by the Recipient allows for the separate and accurate identification of contributions and Eligible Expenditure on the Project.
24. A clear audit trail of all Funds and Eligible Expenditure must also be available on request and as required to meet the requirements in the Funding Agreement.

Schedule 4

Form of Funds payment request

|  |  |
| --- | --- |
| To: | The Office of Energy Climate Change in the New South Wales Treasury (ABN 99 095 235 825) (**NSW Treasury**)  OR  The Department of Environment, Land, Water and Planning  (ABN 90 719 052 204) (**DELWP**) |
| Attention: | [*insert*] |
| Date: | [*insert*] |

Funds Payment Request –Hume Hydrogen Highway Initiative – Reference number [*insert*] dated [*insert*] between [*insert name of Recipient*] (**Recipient**), The NSW Treasury and DELWP (**Funding Agreement**).

This is a Funds Payment Request for the purposes of the Funding Agreement.

Terms used but not defined in this Funds Payment Request have the meaning given to them in the Funding Agreement.

1. Submission of invoice
2. The Recipient submits the **attached** invoice for payment in accordance with the Funding Agreement.
3. The invoice is for the amount of A$[*insert*] and is for [*identify Milestone to which the invoice relates*].
4. Other matters

The Recipient warrants to the NSW Treasury and DELWP (jointly and separately) that as of the date of this Funds Payment Request:

1. all Payment Criteria in respect of this Funds Payment Request have been met;
2. the Warranties set out in the Funding Agreement are true and correct in all material respects as at the date of this Funds Payment Request [*other than: [insert]*];
3. no breach of the Funding Agreement by the Recipient is continuing or would result from the payment;
4. the Recipient has complied with all of its obligations in connection with the Knowledge Sharing Plan; and
5. the Recipient is able, and has sufficient funds, to complete the Project by the Project Completion Date in accordance with the Funding Agreement.

Signed:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*insert name of signatory*], being an authorised officer of [*insert name of Recipient*] for the purposes of the Funding Agreement

Schedule 5

Adjustment of Total Funds

1. Adjustment procedure

## Acknowledgement

The parties acknowledge and agree that:

* + 1. the Departments determined the Total Funds that could be provided under this Funding Agreement on the basis that the Recipient would be required to expend the Total Estimated Costs as set out in the Initial Budget to deliver the Project;
    2. if the Final Costs for each Milestone are less than the Estimated Milestone Costs, the Total Funds may be adjusted such that the Departments receives a refund of a portion of the Funds provided to the Recipient in accordance with this Schedule 5, split between the Departments based on the ratio of payments made by each Department for that relevant Milestone;
    3. if the Final Costs for each Milestone are greater than the Estimated Milestone Costs, the Total Funds will not be increased; and
    4. the Total Funds for this Funding Agreement will not exceed $20 million.

## Recipient calculation of adjustment to Total Funds

* + 1. Following each Financial Close, the Recipient must calculate in good faith:
       1. the Final Costs for that Milestone;
       2. any difference between the Final Costs for that Milestone and the Estimated Milestone Costs (**Cost Savings**);
       3. the Total Funds less the Cost Savings (**Adjusted Total Funds**); and
       4. the aggregate amount of all Funds distributed to the Recipient under this Funding Agreement as at Financial Close (**Distributed Funds**).
    2. If the Final Costs for that Milestone are greater than the Estimated Milestone Costs, the Total Funds will not be adjusted.
    3. The Recipient must notify the Departments in writing of all amounts described in clause [1.2(a)](#_bookmark174) of this Schedule 5 (**Draft Calculations**) along with reasonable supporting detail outlining the basis for those calculations (including an itemised breakdown of any variances between Final Costs and Estimated Costs) within 20 Business Days’ of each Financial Close.
    4. No later than 30 Business Days’ after the Recipient notifies the Departments of the Draft Calculations, the Departments must provide notice to the Recipient confirming whether the Departments accept or reject the Draft Calculations.
    5. If within the required period for notification under clause [1.2(d)](#_bookmark175) of this Schedule 5:
       1. the Departments:
          1. notify the Recipient that they accept the Draft Calculations; or
          2. fail to give a notification under clause [1.2(d)](#_bookmark175) of this Schedule 5,

then the Total Funds will be deemed to be the Adjusted Total Funds for that Milestone with effect on and from Financial Close for that Milestone; or

* + - 1. if the Department notifies the Recipient that it rejects the Draft Calculations then clause [1.3](#_bookmark178) of this Schedule 5 will apply.

## Review of Draft Calculations

* + 1. If either or both of the Departments provide notice to the Recipient under clause [1.2(e)(2)](#_bookmark177) of this Schedule 5 (**Adjustment Dispute Notice**) then the parties must appoint an Expert under clause [25(f)](#_bookmark142) of this Funding Agreement as soon as practicable. If the parties have not appointed an Expert within 20 Business Days’ after the date of the Adjustment Dispute Notice, either party may submit the matter to Dispute resolution under clause [25](#_bookmark136) of this Funding Agreement.
    2. The Recipient must provide to the Expert (with a copy to the Departments):
       1. a copy of the Initial Budget which clearly identifies the Total Estimated Costs and the Estimated Milestone Costs as at the Commencement Date;
       2. all evidence reasonably required by the Expert of all Final Costs incurred by the Recipient; and
       3. details of the Recipient’s process and calculations in determining the Draft Calculations.
    3. Within 20 Business Days’ of receipt of the information under clause [1.3(b)](#_bookmark180) of this Schedule 5, the Expert must:
       1. undertake a process review of the Draft Calculations;
       2. provide confirmation by way of notice to the Department and the Recipient that based on its review it either:
          1. agrees that the Recipient’s process and the Draft Calculations comply with clause [1.2(a)](#_bookmark174) of this Schedule 5; or
          2. does not agree that the Recipient’s process and the Draft Calculations comply with clause [1.2(a)](#_bookmark174) of this Schedule 5.
    4. If the Expert gives a notice under clause [1.3(c)(2)](#_bookmark182)(A) of this Schedule 5 then the Total Funds will be deemed to be the Adjusted Total Funds with effect on and from Financial Close.
    5. If the Expert gives a notice under clause [1.3(c)(2)](#_bookmark182)(B) of this Schedule 5 then the Recipient must re-perform its obligations under clauses [1.2](#_bookmark174) and [1.3(a)](#_bookmark179) of this Schedule 5 within 10 Business Days’ and the Expert must repeat the steps under clause [1.3(c)](#_bookmark181) of this Schedule 5 until the Expert gives a notice under clause [1.3(c)(2)](#_bookmark182)(A) of this Schedule 5.
    6. The parties agree that the calculations and determinations made by the Expert under clause [1.2](#_bookmark173) of this Schedule 5 will not be subject to the Dispute resolution procedures under this Funding Agreement and that the determination of the Expert will be final and binding on the parties.

## Reduction or refund

* + 1. If the Total Funds are adjusted under clause [1.3(d)](#_bookmark183) of this Schedule 5 and the amount of the Adjusted Total Funds is greater than the amount of Distributed Funds, the Departments will continue to make Milestone Payments under the Funding Agreement as scheduled, up to the amount of the Adjusted Total Funds (or such greater amount as the Departments may determine in its absolute discretion).
    2. If the Total Funds are adjusted under clause [1.3(d)](#_bookmark183) of this Schedule 5 and the amount of the Distributed Funds is greater than the Adjusted Total Funds, the Departments may, in their absolute discretion, require the Recipient to refund the difference between the Distributed Fund and the Adjusted Total Funds to the Departments split between the Departments based on the ratio of payments made by each Department for that relevant Milestone pursuant to clause [24.1(e)](#_bookmark132) of this Funding Agreement (up to the total amount of Funds actually distributed to the Recipient by the Department) (**Refund Amount**).

1. Definitions

The meanings of the terms used in this Schedule 4 are set out below.

|  |  |
| --- | --- |
| **Term** | **Meaning** |
| **Total Estimated Costs** | means the total amount of Eligible Expenditure estimated for the Project as set out in the Initial Budget. |
| **Estimated Milestone Costs** | means the total amount of Eligible Expenditure estimated for the Project at each Financial Close (including for the final Milestone) as set out in the Initial Budget. |
| **Final Costs** | means the total amount of Eligible Expenditure for the Project as set out in the Financial Close Budget. |
| **Financial Close** | means the dates on which each Milestone is achieved. For the avoidance of doubt, Financial Close applies to the final Milestone. |
| **Financial Close Budget** | means the updated Budget for the Project as at each Financial Close. |
| **Initial Budget** | means the Budget for the Project as at the Commencement Date. |

Schedule 6

1. **Knowledge Sharing Plan**

**[Drafting note**: Knowledge Sharing Plan and Knowledge Sharing Deliverables *will* be included in this Funding Deed and will be determined based on the scope of the grant recipient's application.]

1. **Knowledge Sharing Deliverables**

Schedule 7

**Guidelines**

Schedule 8

1. **Data Sharing Schedule**

**[Drafting note**: Data Sharing Schedule *will* be included in this Funding Deed if determined as required by the Departments in response to the Recipients Application. The terms of the Data Sharing Schedule must be agreed prior to execution of this Funding Agreement and must be on terms acceptable to the Departments]

Executed as an agreement [*Drafting note: to be updated prior to execution]*

|  |  |
| --- | --- |
| Electronically\*\* signed for **The Crown in Right of the State of New South Wales** acting through The Treasury  by its authorised representative but not so as to incur personal liability: | in the presence of |
|  |  |

*sign here* ►

*Print name here* ►

|  |  |  |
| --- | --- | --- |
| Electronically signed\*\* Signature of Authorised Signatory |  | Electronically signed\*\* Signature of Witness |
| Electronically signed by me\*\* Name of Authorised Signatory |  | Electronically signed by me\*\* Name of Witness |
| Position of Authorised Signatory |  | Address of Witness |
| Date |  | Date |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** |  | By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with section 14G of the  *Electronic Transactions Act 2000* (NSW) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Electronically\*\* signed for **The Crown in Right of the State of Victoria** acting through DELWP  by its authorised representative but not so as to incur personal liability:  *Sign here* ► | | in the presence of | | |
| Electronically signed\*\* Signature of Authorised Signatory | |  | Electronically signed\*\* Signature of Witness | |
| Electronically signed by me\*\* Name of Authorised Signatory | |  | Electronically signed by me\*\* Name of Witness | |
| Position of Authorised Signatory | |  | Address of Witness | |
| Date | |  | Date | |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** | |  | The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic) have been met. | |

*Sign here* ►

|  |  |  |  |
| --- | --- | --- | --- |
| Electronically\*\* signed for [**the Recipient] in accordance with section 127 of the Corporations Act:** | | | |
| Electronically signed\*\* Signature of Director 1 |  | Electronically signed\*\* Signature of  Director 2/ Company Secretary | |
| Electronically signed by me\*\* Name of Director 1 |  | Electronically signed by me\*\* Name of  Director 2/ Company Secretary | |
| Date |  | Date | |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** | | | |

**Budget**

Attachment 2

**Variations Record**

The parties refer to the funding agreement between the Crown in Right of the State of New South Wales, acting through the NSW Treasury, the State of Victoria acting through the Department of Environment, Land, Water and Planning and [*insert Recipient name*] dated [●] (**Funding Agreement**).

Unless stated or the context requires otherwise, a capitalised term used in this document has the meaning given to it in the Funding Agreement, and a reference to a provision in this document is a reference to a provision in the Funding Agreement.

Per clause [10,](#_bookmark36) the parties agree that the Funding Agreement is varied in accordance with the table set out below, on and from the date that both parties have executed this document (unless agreed otherwise).

|  |  |  |  |
| --- | --- | --- | --- |
| **Variation No.** | **Date of variation** | **Reason for variation** | **Variation** |
|  |  |  |  |
| 1 | [*insert*] | [*insert*] | [*Drafting note: Insert clear description of variation. For example: ‘The date for completion of Milestone 1 in item* [*1.3*](#_bookmark157) *of* [*Schedule 1*](#_bookmark152) *is* varied to …’] |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
| 7 |  |  |  |

##### Executed as an agreement

[*Drafting note: NOT for executing at the time that the parties execute the Funding Agreement. The below execution blocks are to be used in the event that the parties execute a variation in accordance with this Attachment*]

|  |  |
| --- | --- |
| Electronically\*\* signed for **The Crown in Right of the State of New South Wales** acting through The Treasury  by its authorised representative but not so as to incur personal liability: | in the presence of |
|  |  |

*sign here* ►

*Print name here* ►

|  |  |  |
| --- | --- | --- |
| Electronically signed\*\* Signature of Authorised Signatory |  | Electronically signed\*\* Signature of Witness |
| Electronically signed by me\*\* Name of Authorised Signatory |  | Electronically signed by me\*\* Name of Witness |
| Position of Authorised Signatory |  | Address of Witness |
| Date |  | Date |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** |  | By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with section 14G of the  *Electronic Transactions Act 2000* (NSW) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Electronically\*\* signed for **The Crown in Right of the State of Victoria** acting through DELWP  by its authorised representative but not so as to incur personal liability:  *Sign here* ► | | in the presence of | | |
| Electronically signed\*\* Signature of Authorised Signatory | |  | Electronically signed\*\* Signature of Witness | |
| Electronically signed by me\*\* Name of Authorised Signatory | |  | Electronically signed by me\*\* Name of Witness | |
| Position of Authorised Signatory | |  | Address of Witness | |
| Date | |  | Date | |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** | |  | The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic) have been met. | |

*Sign here* ►

|  |  |  |  |
| --- | --- | --- | --- |
| Electronically\*\* signed for [**the Recipient] in accordance with section 127 of the Corporations Act:** | | | |
| Electronically signed\*\* Signature of Director 1 |  | Electronically signed\*\* Signature of  Director 2/ Company Secretary | |
| Electronically signed by me\*\* Name of Director 1 |  | Electronically signed by me\*\* Name of  Director 2/ Company Secretary | |
| Date |  | Date | |
| ***\*\*Strike through words preceding \*\* if not signing electronically*** | | | |

Attachment 3

[**NSW Brand Guidelines**](https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines)

Attachment 4

**Funding Acknowledgement Guidelines**

Attachment 5

**Acknowledgement and Publicity Guidelines for Victorian Government Funding Support**